

~~Senator Macdonald~~

A. Macdonald

~~... license of the particular property. And so we have, therefore~~
provided
 said ~~Mr. President~~, in this bill that henceforth, provisions in con-
 tracts of real estate, like the ones we have read, are no longer go-
 ing to be valid and lawful. ~~that henceforth~~, to begin with, if there
 is going to be an ultimate cancellation, there must be notice by
 registered mail to the purchaser. And if he defaults, then we give
 him several rights which are enumerated in this bill.

First of all, he gets an automatic grace period of one month for
 every 12 installments payments or one year of installment payments.

So that if he had already paid ^{for} five years, and then ⁱⁿ on the ^{sixth} ~~fifth~~
 year because of the floating rate, for example, ^{the} cost of living goes
 up, prices go up, and his salary has not quite caught up with the
 cost of living, ^{pay his installments and} he cannot default. ^{If} there is a calamity in the

family -- somebody died, ~~or~~ there is a major operation or sickness -- ~~and~~

^{which,} of course, ~~that~~ comes first before lot installment payments, ^{and} ~~and~~ he

defaults, then he is given, ^{for} if he has paid five years, five months

within which to pay the defaulted payments. And if eventually he
 cannot pay and the contract is cancelled, he ^{is} given a refund or a

cash surrender value, if ^{we} you may call it, of 50% ^{per cent} of total payments
 made for ~~the~~ five years; and if he has paid ^{for} five years or more, then

there is an additional five per cent per year. If he has paid ^{for} six
 years, he gets a refund of 55% ^{percent}. If he has paid ^{for} seven years, he gets

Ph. J.

a refund of 60% ^{percent} and ^{so on} down the line.

The other thing, Mr. President, that is incorporated in this bill is ^{with respect to} ~~that you will see~~ a standard provision in all these contracts where, surprisingly, subdivision owners do not give the purchaser the right to pay in advance if he wants to or to pay the entire purchase price.

In this particular bill, we ^{provide} say that if he wants to pay in advance, he is allowed to ^{do so;} and that if he pays the entire purchase price, he is entitled to pay without the interest that would have corresponded to ^{the} ~~the~~ balance of ^{the} ~~his~~ purchase price. These are all very common-sense provisions, Mr. President, based on the basic principle ^P of equity and fair play.

^{Also,} ~~Also~~ we have incorporated here a provision where the purchaser has the right, during the ^{period} of grace and before actual cancellation, to sell the property. You ^{will} ~~may~~ be surprised, Mr. President, that in these contracts, ~~again~~ the purchaser is prohibited from selling the property even if he wants ^{to} ~~to~~. He still has to get the consent of the subdivision owner. But if the subdivision owner is interested in getting that lot for one reason or another, he will ^{give consent to} refuse to sell the property. ^{one has} You ~~have~~ to come up with the total default payments to be able to retain ^{his} ~~your~~ property. Again, ^{that} ~~these~~ ^{is} are allowed here, Mr. President.

These, in effect, are the salient provisions of the proposed

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SENATOR MACEDA. Mr. President, before the gentleman from Lanao del Sur takes the floor, as I have already stated, there is an amendment by substitution. I move that the said amendment by substitution be approved as the basis for discussion, subject to interpellations and individual amendments.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the motion is carried.

The following is the draft of the amendment by substitution as approved for discussion:

X

bill, Mr. President, except that we have clarified ~~that~~ under Section ^{that} 3 where less than two years of installment ~~payments~~ have been paid, then there is a lesser grace period of 60 days; ^{however,} ~~and again,~~ the same rights are given ^{to} ~~the purchaser~~ ^{or} the purchaser to sell the property, ^{or} to assign his rights to another person, or to reinstate the contract by updating the account.

I repeat, Mr. President, we are aware of the many irregularities in the real estate business at this time and your Committee on Commerce and Industry, ^{especially} under the incoming chairmanship of the distinguished gentleman from Davao, I am, sure will continue to look into these matters. As a humble ^I member of the Senate, we will continue, Mr. President, to look into all of these ^{particular} problems. I would, therefore, request the support of the entire Senate on this bill, which will protect the savings, the life and ^{the} blood, ~~the~~ sweat and tears of a lot of small purchasers who have been at the mercy of unscrupulous subdivision owners and realtors in the past.

May I, therefore, request, Mr. President, that we approve this bill as soon as possible under the circumstances.

SENATOR TAMANO. Mr. President.

THE PRESIDENT. The gentleman from Davao del Sur.

THE PRESIDENT. We shall now vote on the bill as amended on second reading. As many as are in favor of the bill, as amended, will please say Aye. (Several senators: Aye.) As many as are against will please say Nay. (Silence.) House Bill No. 2184 is approved on second reading, as amended.

The Majority Floor Leader.

BILL ON SECOND READING

8 *nt.bfcaps* S. No. 775 — PROTECTION ^{FOR} ~~OF~~ BUYERS OF REAL PROPERTY

SENATOR ROY. Mr. President, I move that we now consider Senate Bill No. 775.

THE PRESIDENT. Consideration of Senate Bill No. 775 is now in order.

With the permission of the Senate, the Secretary will read only the title of the bill, without prejudice to inserting the whole text in the Record.

THE SECRETARY:

X

10 pt
SENATOR ROY. The distinguished gentleman from Laguna and Ilocos Sur, the Hon^{orable} Ernesto Maceda, will sponsor the bill. I ask that he be recognized.

THE PRESIDENT. The gentleman from Laguna and Ilocos Sur, Senator Maceda, will ^{now} sponsor the bill.

APRIL 3, 1972. 6:10 pm EM I-2 Puyat prés.

MACEDA SPONSORSHIP SPEECH

SENATOR MACEDA. Mr. President and distinguished colleagues

of the Senate:

This bill is one of several consumer-protection bills

that we have presented to Congress, and pending in the Committee

on Commerce and Industry, and which we have reported out with

the support of the members of ^{that} said Committee. The evil it seeks

to prevent and cure, Mr. President, is well known to every

citizen who is a buyer of a lot or lot and house on installment.

In the natural course of business or in the natural course of

things, Mr. President, ^{to} a lot of ordinary people, so to speak --

government employees, wage earners in the different private

companies and corporations, teachers and laborers, especially --

their natural aspiration and dream is to eventually own a house

and a lot of their own. They spend many years trying to save

for the initial down payment, until they come across a property

that is within their liking and is within their means -- besides,

of course, some of the recent housing projects that the government

has ^{undertaken} established. And in the natural course of business and things,

and this includes your humble servant who is already a lawyer, ^{because}

I have purchased some lots with my wife, ~~and~~ some in the name of

my kids, ~~and~~ ^{they} on installment ~~and~~ have never really bothered to read

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^{in the contract}
the fine prints. This, of course, is a deficiency on the part
of the buyer. But the realities of the situation are such that
if we take the ordinary buyer or vendee, that is the usual case.
And ^{it} ~~there~~ has been brought to my attention — and, frankly
speaking, ~~that~~ ^{it} I have experienced personally — that the conditions
in the standard installment sales contract, representative copies
of which I have here, are, as stated in the explanatory note
of the original bill, ^{unfair if not oppressive and onerous, one of which reads} something like this, ~~which is~~ typical:

8 p. "In case the PARTY OF THE SECOND PART fails to
satisfy any monthly installments, or any other payment
herein ^{agreed} upon, except taxes mentioned in Paragraph Five
of this agreement, he is granted one month grace period
within which to make the overdue payment, together
with the installment corresponding to said month of
grace period; IT IS UNDERSTOOD, HOWEVER, that should
a second period of Ninety (90) days lapse, to begin
from expiration of the month of grace herein mentioned,
and the PARTY OF THE SECOND PART has not yet paid all
the amounts he should have paid, the PARTY OF THE FIRST
PART shall have the right to declare this contract
cancelled and of no further effect, and as a consequence
thereof, the PARTY OF THE FIRST PART may dispose of
the parcel or parcels of land covered by this contract
in favor of other persons, as if this contract had
never been entered into. In case of such cancellation
of this contract, all the amounts paid in accordance
with this agreement together with all the improvements
made on the premises ~~for~~" —

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10 pt. I repeat, Mr. President, ~~that~~

8 pt. "together with all the improvements made on the premises" —
~~there~~ shall be considered as rents paid for the use and occupation of the above-mentioned premises, and as payment for liquidated damages suffered by the PARTY OF THE FIRST PART, by failure of the PARTY OF THE SECOND PART, he hereby renounces all his rights to demand or reclaim the return of the same and obligates himself to peacefully vacate the premises and deliver the same to the PARTY OF THE FIRST PART with all improvements made therein without any right of reimbursement. A penalty interest of eight (8%) per centum per annum shall be charged on all overdue amortizations."

10 pt *Q* That is one typical provision. There are many similar types,
Mr. President.

May I now read ^{from} the standard contract of the Ayala Corporation, the Ortigas Corporation and all the big corporations:

8 pt. "Should the purchaser fail to make the payment of any of the monthly installments together with the interest thereon as agreed herein, or of all the taxes and assessments levied on the property during the term of this contract within _____ ..."

10 pt. In this particular case, Mr. President, "90 days" is typed here, ^{but they} ~~although it could~~ ^{(put} ~~be 30 days as sometimes some realtors or~~

~~SENATOR MACEDA~~ "30 days" as sometimes some realtors or subdivision owners do. (Continuing.)

8 ft. "This contract shall, by the mere fact of nonpayment, expire by itself and become null and void without necessity of notice to the purchaser" }

10 ft. That is another thing ~~that~~ I would like to ^{emphasize} ~~underline~~ ^{or} "without necessity of notice to the purchaser" ^{or} of any judicial declaration to that effect and any and all sums of money paid under this contract together with all the improvements made on the premises "..."

10 ft. ~~Each~~ I repeat, Mr. President, *

8 ft. "together with all the improvements made on the premises" ~~shall~~ "shall be considered and become rentals on the property, and in this event, the purchaser, should he be in possession of the property, shall become a mere intruder or unlawful detainer of the same and may be ejected therefrom by any means provided by law for trespassers or unlawful detainers. Immediately after the expiration of the 90 days provided for in this clause, the owner shall be at liberty to dispose of and sell said parcel of land together with all the improvements made on the premises to any other person in the same manner as if this contract had never been executed and entered into,"

10 ft. And to make matters worse, Mr. President, the next paragraph reads:

8 ft. "The breach by the purchaser of any of the conditions contained herein shall have the same effect as nonpayment of the installments of the purchase price."

meaning to say, that it is not only limited to nonpayment of installments.

For example, in this typical standard contract of 18 very small-printed

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provisions, ^{if} one violates any of these ~~provisions~~, then again the owner can say, "You have violated No. 7 or you have ~~not~~ violated No. 16. ⁼ Your contract is cancelled."

We have been informed, Mr. President, of some subdivision lots having been sold ^{six seven} ~~6~~ or ~~7~~ times over. We have been informed, Mr. President, of how some subdivision owners - simply because they don't like the face of the buyer one morning, and most buyers are usually in default one or two installments - have cancelled ~~the~~ contract ^p arbitrarily.

Mr. President, I discussed this particular bill with our distinguished expert, the gentleman from Pangasinan and Manila, Senator Padilla, and he said, "Your bill is a good bill. It is the proper solution ^{and} ~~but~~ it is made necessary because, ordinarily, the situation should have been covered by Articles 1591 and 1592 of the New Civil Code. But unfortunately," according to the gentleman from Pangasinan and Manila, "the Supreme Court, in ^a decision interpreting Article 1592, has ~~to~~ ruled that that particular provision does not apply to ^{sales on} installment payments ^{on} of real estate".

And so, Mr. President, considering the evil, considering the arbitrary practices that have been brought to our attention in the matter of sales of real estate on installment, subdivisions especially, we decided to file this bill. When we filed this bill, Mr. President, we were aware of the many other complaints that were brought to the attention of the authorities, including ^{this} humble representation -- subdivision owners not complying with their covenants to provide water, roads, electricity,

after beautiful full-page ~~of~~ big advertisements in the newspapers saying, "Development underway, curbs and gutter being constructed, 10% down and 15 years to pay." All these come-ons, Mr. President, have served to stimulate a lot of business in this particular regard.

I was surprised, Mr. President, to find out that as far as the records of the Land Registration Commission is concerned, from January 1966 to January 1972, they registered an increase of 98,000 subdivisions all over the country. This, of course, includes ~~the~~ ~~small~~ subdivisions ~~with~~ ^{with} of small lots. They are not all ~~the~~ big subdivisions. However, Mr. ^{true,} President, it is a matter of public knowledge, that the real estate business is booming and subdivisions are mushrooming ^{all} over the suburbs and all over the country.

We were also informed of certain practices where a poor subdivision lot buyer, after having paid all the installments, could not get his title to the property because the property as a whole was mortgaged to the bank by the subdivision owner, and the bank would not allow the subdivision owner to release a few lots out of the whole, ^{or has actually} foreclosed the property ~~without~~ the knowledge of the individual buyers.

Well, I mentioned these things, Mr. President, to say that we are aware of them and that we would have wanted to include them in an omnibus bill. But we became aware of the fact that all of these complaints were so extensive that incorporating them into an omnibus bill might cause the particular bill to undergo difficulties, ~~if~~ considering the short time ~~that~~ we have left in the ^{is} session.

So, we decided — for purposes of simplicity, as we say here, and for purposes of immediately ^{providing} ~~providing~~ the principal remedy to the principal problem, which is the matter of indiscriminate cancellation without any refund of installment payments, especially ^{to the} ~~of~~ small lot buyers — to file this limited bill, Mr. President. And to get a cross-section of ^{public} ~~the~~ opinion, we called two ~~public~~ hearings — and we were ready to call more — one on March 3 and another on March 13. But we decided ~~that~~ it was time to report it out because to our great surprise and satisfaction, in these two public hearings there was unanimity from, of course, the buyers represented by some of the metropolitan politicians and ~~the~~ ^{government} ~~represented~~ by some of the metropolitan employee-association presidents, like

the president of the COGEO and the president of the PGFA who both testified. And to our great surprise, the realtors were all very strongly in favor of this bill because they accepted that ^{it} ~~was~~ would be good for the realty business. If protection is assured to the lot buyer, there would be more people buying realty on installments. And to our further greater surprise, the subdivision owners also agreed, of course, claiming that they were not really guilty of unreasonable or indiscriminate cancellation, but the small fly-by-night subdivision owners who are not members of their association.

And so, Mr. President, after two public hearings we have reported out an amended version of the bill, ^{copies of} which ~~has~~ ^{have} been distributed, ^{but} which, I beg the pardon of the Senate, has not been dated. ~~the~~ ~~amended~~ ~~copy~~. This should have been dated March 21, Mr. President.

In short, we felt that it was unfair, ~~if~~ if ever there should be a cancellation, ^{that} there should be no refund whatsoever -- and not only that, ~~if~~ all improvements will have to be forfeited and that no notice is even required for any cancellation. We immediately recall to mind the principle of cash surrender value in insurance and ^{the} automatic loan clauses in insurance policies, which ^{are} ~~is~~ not even based on anything tangible but the intangible act of protecting the insured.

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In the case of real estate, it is a matter of accepted public knowledge that real estate ^{value} invariably goes up and it is very, very, very rare ^{in value} that real estate value goes down in any locality. So that in addition to the cancellation and ~~the~~ forfeiture of all payments and improvements, the vendor or the subdivision owner recovers after so many years the same piece of property ^{which has become} much more valuable or ^{is} higher in price ^{than} when he had originally disposed of the particular property.

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Seventh Congress of the Republic)
of the Philippines :
Third Session)

S E N A T E
S. No. 775
(Amendment by Substitution)

Introduced by Senator Maceda

8.M
AN ACT
TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE PROPERTY
ON INSTALLMENT PAYMENTS.

Be it enacted by the Senate and House of Representatives
of the Philippines in Congress assembled:

1 SECTION 1. This Act shall be known as the "Realty
2 Installment Buyer Protection Act".

3 SEC. 2. In all transactions or contracts involving
4 the sale of real estate property on installment payments,
5 except commercial buildings, where the vendee has paid at
6 least two years of installments, the vendee is entitled
7 to the following rights in case he defaults in the payment
8 of succeeding installments:

9 (a) To pay, without interest, the unpaid installments
10 due within the total grace period earned by him, which
11 is hereby fixed at the rate of one month grace period
12 for every one year of installment payments made: Provided,
13 That this right shall be exercised by the vendee only
14 once in every five years of the life of the contract
15 and its amendments, if any.

16 During the grace period and before actual cancella-
17 tion of the contract, the vendee shall have the right
18 to sell or assign his rights to another person or to
19 reinstate the contract by updating the account.

20 (b) If the contract is cancelled despite the grace
21 period granted in the preceding subsection, the vendor
22 shall refund to the vendee the cash surrender of the

8 ft

1 payments on the property equivalent to fifty per cent of
2 the total payments made and, after five years of install-
3 ments, an additional five per cent every year but not to
4 exceed forty per cent of the total payments made: Provided,
5 That the cash surrender value shall be refunded by the
6 vendor to the vendee within ninety days after the actual
7 cancellation of the contract: Provided, further, That
8 the actual cancellation of the contract shall take place
9 after thirty days from receipt by the vendee of the notice
10 of cancellation sent by registered mail.

11 Downpayments, deposits or options on the contract
12 shall be included in the computation of the total number
13 of installment payments made.

14 SEC. 3. In case where less than two years of install-
15 ments were paid, the vendor shall give the vendee a grace
16 period of not less than sixty days from the date the ins-
17 tallment became due. If the vendee fails to pay the ins-
18 tallments due at the expiration of the grace period, the
19 vendor may cancel the contract after thirty days from re-
20 ceipt by the vendee of the notice of cancellation sent by
21 registered mail.

22 During the grace period and before actual cancell-
23 ation of the contract, the vendee shall have the right
24 to sell or assign his rights to another person or to
25 reinstate the contract by updating the account.

26 SEC. 4. The vendee shall have the right to pay in
27 advance any installment or the full unpaid balance of
28 the purchase price any time without interest.

29 SEC. 5. If any provision of this Act is held invalid
30 or unconstitutional, no other provision shall be affected
31 thereby.

32 SEC. 6. This Act shall take effect upon its approval.

Approved;

20

SEN II-2 4-3-72 6:30 pm.

SENATOR TAMANO. Well, that is quite a good rationale. Now,
Your Honor, I foresee that some subdivision owners ^{will} ~~would~~ try to
evade the provisions of this bill in the same way that sellers of
movable property, like cars, radios, household appliances, have
invented a gimmick whereby they can evade the provisions of the ^{installment} law.
And the way they have done this, Mr. President, is to require that
a contract be entered into with a financing company. Supposing,
Mr. President, ~~that~~ a real estate or subdivision owner ~~would~~
~~of a non-developing subdivision.~~

~~Senator Tamano~~

say to ~~me~~ ^{lot,}
would ~~require~~ ~~that~~ a person buying a subdivision ^{lot,} ~~that~~ "I

am not going to sell this lot directly to you. You buy it

through ABC Financing Company, and then you be the one to

enter into a contract with ABC Financing Company." ^{will} ~~that~~ ^{Such a}

situation will remove this particular contract from the

purview of the bill. Because actually, Mr. President, it

is not a contract between a vendee and a vendor, but it is

a contract between a financing company and a buyer. How

would ~~we~~ ^{we} face such a situation, Your Honor?

SENATOR MACEDA. I believe, Your Honor, that under the
purview of Sec^{tion} 2 as reported out by the Committee, it speaks
of all transactions or contracts involving the sale of real
estate property. Meaning to say, and this is my view, that
whether it is done directly by the landowner, by a realtor,
by ^a the subdivision owner, or by ^a the financing company, as
long as the subject matter is real estate, then these parti-
cular rights would still be available to the purchaser even
as against the financing company.

SENATOR TAMANO. Your Honor, that is with respect to
a contract entered into between the financing company and the
subdivision owner. But between the financing company and the

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vendee, or the buyer, of the subdivision, ^{lot;} it will not be
anymore ^a ~~in the area of~~ the estate transaction. It will be a
contract of loan because the financing company will say, ~~that~~
"As far as I am concerned, I have faith in the vendor. ~~And so,~~
this is a pure and simple money contract between us."

SENATOR MACEDA. Well, I do not believe, Your Honor, that
any financing company will give ^{one} you a straight loan to buy real
estate property without giving itself the protection of either
a first or second mortgage on the property; and even without
that, I think ~~that~~ if it is shown in court -- as it could easily
be shown [—] that it involves a real estate transaction, ~~then~~, as
I said, Sec. ^{Two} 2 would still cover it. I am happy that ^{Your Honor is} you are
clarifying this for the record so that, should there be any
question, it could be made a reference point.

SENATOR TAMANO. In other words, ^{Honor} you would be amenable ^{when}
^{we are in the period of} ~~in the course of~~ amendment, to ~~making~~ a provision which would
clarify this point.

SENATOR MACEDA. Yes, Your Honor.

SENATOR TAMANO. ~~Because~~ I believe that many people who
have purchased household appliances have ^{had a} very sad experience
with respect to the appliances they have bought. ^{And} ^{frankly,}
Your Honor, this humble representation has ^{had} also the ^{same sad} experience

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with respect to the purchase of a car. I found out that I
paid at least 25 per cent more because ~~the price of~~ the car
~~the~~ distributor would not allow a direct purchase. ^{One has} ~~You have~~
^{cause} to ~~pass~~ it through a financing company which, after all, may
^a be ~~the~~ dummy or ^{an} affiliated ^{ed} organization of the same ^{group} ~~company~~
that is selling the property. So I hope that this matter ^{can} ~~be~~
clarified.

SENATOR MACEDA. We will be grateful to Your Honor for
the proper amendment.

9 PS IV-1 4/3/72 6:40 P.M.

A

SENATOR TAMANO. Now, there is also another point that I would like to clarify, Mr. President, ~~and that is that~~ There is a provision to the effect here that the cancellation of the contract shall take place after thirty days from the receipt by the vendee of the notice of cancellation sent by registered mail. I think, Mr. President, that this provision would give some measure of protection to the vendee or the buyer, but, perhaps, ^a ~~the~~ stronger protection can be given him if ^{we} ~~provide~~ ~~provision should be made~~ that the actual cancellation of the contract shall take place after the subdivision owner shall have returned to the ^{vendee} ~~person~~ the cash surrender value that he is required by law to give because for as long as he does not make such a return, then, Mr. President, there is an additional grace period that is given to the vendee, which in many instances could be quite a number of months.

SENATOR MAQUEDA. Well, ^{the} ~~your~~ proposal sounds good to us, Your Honor. We will be willing to consider it, we will, of course, have to consult with some of the experts ^{on} of the practical effects of that because some of the subdivision owners have brought out the fact that they normally roll over the capital for the subdivision and that is why they ask for a 90-day period within which to pay the refund, ~~and~~ We will have to relate it only to that question as to whether it

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B

would cause also ^{an undue} hardships on the part of ~~the~~ subdivision

owners. But, offhand, as I said, it sounds good to me, Your Honor.

^{If} SENATOR TAMANO. Your Honor, ^{is} ~~you are~~ thinking of justice for

the small consumers or for the small man, I think that he is entitled

to this. Because, why ^{should the vendor} ~~you~~ cancel the contract, in ^{the} a case of a

consensual and ~~a~~ bilateral contract, when ^{he has} you ~~have~~ not done ^{his} your share

and which is to give ^{the vendor} ~~him~~ what should properly belong to him under

this bill?

SENATOR MACEDA. Well, we will study the matter, Your Honor,

But, ~~and so~~ in principle, we are inclined to agree with ^{Honor's} your proposal.

SENATOR TAMANO. Thank you, Your Honor. Now, Your Honor, please

ⁱⁿ in the course of your impassioned sponsorship, which I believe is

brought about by your belief in the justice and ~~the~~ equity of this

bill and because of your belief that the consumers ^{are} are entitled to

protection, you mentioned about brochures being made which are inviting

and which make certain promises ^{but} which later on are not fulfilled.

Now, ^{Honor} would you ^{include} not ~~provide for~~ a provision here whereby the

non-fulfillment by a subdivision owner of some of the promises ~~that~~

he may have made ^{promises} which brought about the consummation of the sale for

which may have convinced the ^{prospective} ~~prospective~~ buyer to buy the property ^{or} ~~the~~

where the owner ^{forth} ~~he~~ does not fulfill the condition that was set ~~out~~ in the brochure. 23

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C

Would ~~this not~~ be made ~~as~~ a ground for withholding or preventing the cancellation of the contract?

SENATOR MACEDA. I believe, Your Honor, that under the existing provisions of the ^{new} Civil Code, once there is an agreement and certain covenants or warranties ~~have been~~ made as a condition ^{for} of the sale ~~and that~~ ^{are} is not complied with, then the buyer may sue for ^S rescission of the contract and he shall be entitled to get his money back. As I said, we were very greatly tempted to expand the coverage of the bill to include so many things. ^{But} ~~and~~ when we started to do so, all sorts of proposals came in, including the creation of a separate Real Estate Commission. ~~the bill~~ I am afraid that it might not be ^{opportune} timely at this time to cover ^{everything in one} the ~~whole~~ bill considering that it really requires a lot of hearings and technical studies. I believe, ~~that~~ that the particular example ^{you} cited is covered by the general provisions of the New Civil Code.

SENATOR TAMANO. ~~No~~ ^{But} ⁱⁿ Your Honor, please, ~~in~~ common experience, ~~a buyer or a vendee cannot resort to filing a case in court...~~

Senator Mageda

the buyer or ~~the~~ vendee ^{does} cannot resort to filing a case in court. He does not have the money, perhaps, ~~and~~ he does not have the time and ^{he does not} ~~and~~ ^{exert efforts} the energy to look for a lawyer. Now, ^{can include} if we provide here, for instance, a provision to cover cases where ^{or} that ~~if any~~ promises are made in the brochure of any advertisement of the subdivision which may have convinced the buyer to buy, ^{but which} and ~~then~~ later on ^{are} ~~it is~~ not fulfilled, ^I in other words, ~~this~~ a warranty that the failure to fulfill the ^{promises made} warranty would be a ground for estoppel on the part of the subdivision owner from foreclosing or cancelling the contract. This will give ^{another} additional protection to the buyer.

SENATOR MAGEDA. Well, definitely, Your Honor, it ^{will} would give additional protection to the buyer. We were, however, impressed by ^{what} the subdivision owners ^{stated} during the hearing that, in a sense, they are doing also a service to the nation by helping solve partially our housing problem, which we know is now a serious problem; and that any unreasonable provisions in a law such as this, which might affect their capacity to raise capital or to roll over capital, or which might stifle sales, would, from another viewpoint, ^{be not} conducive to a faster rate of subdivision growth.

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4/4/72
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Now, what we seek to really hit there are -- as they say and as we say -- the fly-by-night concerns, ~~so to speak, the small ones.~~

And as far as that particular example is concerned, as a matter of fact, there was a draft ^{provision to the effect} ~~where we said~~ that if a subdivision owner does not comply with his express stipulation or warranty that he would provide roads, water, electricity and basic facilities within a certain time, then there is actually no default that will ensue -- meaning to say, that for that reason, the buyer will be entitled to withhold payments ^{of} ~~from~~ his installments until the owner complies.

We were thinking of that, but I must confess that, as I said, we decided against it, ^{and limited ourselves to} ~~hoping that~~ a much simpler version like this, ~~making~~ ¹⁵⁹² ~~again~~. In effect, this is remedying the loophole that Article ~~2002~~ ¹⁵⁹² of the New Civil Code has opened by virtue of Supreme Court decisions. We limited ourselves to this particular situation.

SENATOR TAMANO. ~~No,~~ But, Your Honor, please, if it is an unreasonable ^{we} provision, Your Honor will agree that it will stultify or impede the progress of subdivision owners. But, as Your Honor said, the ones that will be discouraged will be the fly-by-night subdivision owners. But subdivisions like ^{Newtown,} ~~subdivisions,~~ when they promise ^{a gutter,} that there will be a gutter, ~~there is a gutter.~~ When they promise ~~there will be mercury~~ ^{will be} lights, there are mercury lights.

SENATOR MACEDA. That is why ^{Newtown is} ~~it~~ the fastest selling subdivisions nowadays -- and I understand that ^{it} they offer very good terms and very reasonable prices, Mr. President.

SENATOR TAMANO. Like ^{its} that advertisement, Your Honor, ^{One would think} ~~thought~~ (that it is Forbes Park or it is Lameta, but the mercury lights are there. So, it is the fly-by-night operators that we should discourage. But I am sure that the big operators, ^{are} these subdivisions which were established and of reputable concern, will not violate their warranty. ^{But just} ~~So, they are~~ the same, We should try to protect the public from these fly-by-night operators who become overnight millionaires.)

SENATOR MACEDA. Well, again, as I said, Your Honor, I have nothing basically against the proposal ^{that is why I said in my sponsorship} speech that there will be a lot of these things that will be brought up, probably in the interpellations, as they were brought up during the hearings. Maybe, if Your Honor can frame the particular amendment he ^{will} desires, we would be willing to consider it at the proper time.

SENATOR TAMANO. Thank you, Your Honor.

SENATOR LAUREL. Mr. President.

THE PRESIDENT. The gentleman from Batangas, Senator Laurel.

SENATOR LAUREL. Mr. President, will the distinguished sponsor
to a few questions.
yield?

THE PRESIDENT. The sponsor may yield if he so desires.

SENATOR MACEDA. Willingly to the very dashing and handsome
Mr. President.
presidential aspirant of the Nacionalista Party, Your Honor.

SENATOR LAUREL. Second only to the distinguished and handsome
gentleman from Ilocos Sur and Laguna and partly from Batangas.

SENATOR MACEDA. Thank you, Your Honor.

SENATOR LAUREL. I would like to say, Mr. President, that this
is a good bill. It has good objectives. I am only concerned somewhat
by certain questions regarding the constitutionality aspect. I recall
that the answer to the question of the distinguished gentleman from
Ilocos del Sur as to whether this affects existing contracts or this
applies only to future contracts, the effectivity date would be the
I a that ~~basis of that stated, would it not,~~ *correct,* Your Honor?

SENATOR MACEDA. Yes, Your Honor.

SENATOR LAUREL. In other words, ~~all contracts.~~ *Assuming*
that this bill becomes a law on June 1, 1972, all contracts executed

before June 1, 1972 will not be affected by this measure.

SENATOR MACEDA. Well, considering, Your Honor, that under the present law as interpreted by Supreme Court decisions, as I said, these rights are not made available and these provisions are allowed, I agree with the gentleman from Lanoa that the constitutional prohibition against impairment of contracts ^{would} ^{apply} seem to ~~be~~.

SENATOR LAUREL. In other words, Your Honor is afraid that if we apply this to existing contract, ^a this measure would become unconstitutional.

SENATOR MACEDA. Well, I am afraid that that would be so, yes.

SENATOR LAUREL. ~~Because~~ I would like to bring to the attention of the Chamber, Mr. President, that this nonimpairment clause of the Constitution is not an absolute rule.

SENATOR MACEDA. Well, I am aware of that, *Your Honor.*

SENATOR LAUREL. So that this bill could very well easily apply to existing contracts, and it has been done before. And the power of Congress to enact measures that regulate contractual rights and obligations has been upheld in ^a their line of decisions. In other words, an example, Mr. President, would be the power of the State to regulate terms and conditions of employment.

Under an anterior decision, I think, it was People v. Pomer, a ^{measure} legislation seeking to control working conditions -- terms and conditions ^{of employment} --

was declared unconstitutional because of the nonimpairment clause.

~~In other words,~~ It was considered as impairing the obligation of contract, ^{and} therefore, it was struck down by our Supreme Court, relying also on what they call ^{ed} pre-New Deal decisions of the United States Supreme Court. However, after the adoption of the new Constitution in 1935, with the inclusion of certain social justice provisions, the ruling of the Supreme Court of the Philippines took a different turn and abandoned squarely the doctrine laid down in People v. Pumar.

In other words, after the inclusion of social justice provisions in the Constitution, the Supreme Court recognized the power of Congress to enact measures calculated to bring about social justice, among which was the regulation of terms and conditions of employment. Therefore, I would like to bring to the attention of the distinguished sponsor that, if his objective is to benefit even those who have entered into prior contracts, it could be done, provided it could be sustained on that ground.

SENATOR MACEDA. Well, I am grateful for Your Honor's explanation.

~~And we did consider this, considering that a case could be made out~~

~~Senator Maceda:~~

~~Well, Your Honor, I am grateful for your explanation. We did consider~~
in view of the fact
 this, ~~considering~~ that a case could be made out for a valid exercise of the
 police power of the State in this case, especially if these provisions, which
 I have cited in existing contracts, are expressly outlawed and penalties are
 imposed ^{when} ~~on entering into~~ contracts of this nature ^{are entered into.} But we wanted to avoid
 any constitutional question, ^{which} that Your Honor For example, raised with regards
 to the ^{now} ~~impairment~~ of obligations and contracts.

SENATOR LAUREL. ~~Because~~ I agree with Your Honor that a lot of buyers
^{taken advantage of}
 have been ~~abused~~ by real estate brokers and realtors. They have been subjected
 to terribly onerous agreements. But ~~perhaps~~ if it is within our power to
^{perhaps}
 relieve them of their situation, we should also include them.

SENATOR MACEDA. Well, we were just playing safe, Your Honor. We thought
^{have}
 that if we apply this prospectively and just ~~by~~ a positive declaration of what
 are the rights of buyers, then definitely there would be no constitutional
 question involved. ^{if} But ~~once~~ we take the other view which, Your Honor is
 suggesting, ~~and~~ which has a good basis in fact, and with due respect to Your
 Honor's opinion ~~to~~ which I don't disagree, I am just pointing out that this
 will undergo some constitutional test.

SENATOR LAUREL. Well, certainly, there will be realtors and sellers of
 real estate who will question the constitutionality of this measure because
 their interest^s are affected. But that does not mean that because they may file

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such a test case in the Supreme Court, ~~that~~ we should not proceed with what we believe is within our constitutional powers. I was just discussing this with the distinguished President Pro Tempore and he seems to agree to the theory that it is within the power of Congress to enact regulatory measures intended to protect especially the small people. We have done so in many cases. So that if the distinguished sponsor would reach the conclusion that it is within our constitutional power, would he not include pre-existing contracts?

SENATOR MACEDA. Well, Your Honor, if you notice, as I said, we played safe. And had the gentleman from Lanao not raised the question, we would have left it up to the courts to decide whether it includes existing contracts or not.

SENATOR LAUREL. I think it would be better if we clarify that at this point. In fact, the records of this deliberation will be taken into account by the Supreme Court in the resolution of such a question if ^{it} ~~this~~ is ever brought up. But I notice here on page 2, line 32, that this Act shall take effect upon its approval. Now, that is not too clear. Does ~~it~~ it mean that this will ~~prevent us~~ regulate contracts entered into after the approval of this Act, or (it will) ~~take effect~~ ^{affect} also ~~on~~ pre-existing contracts?

SENATOR MACEDA. Well, as I said earlier, Your Honor, our understanding ^{is} ~~was~~ that this would apply prospectively ^{or} only to new contracts, ~~Because~~ all existing contracts at the time they were entered into were lawful and gave

the vendor, certain rights, on the basis of which he had planned the sub-division, ~~some~~^{his} financing scheme and the like.

SENATOR LAUREL. My point, Your Honor, is, if we are afraid of the question of constitutionality, a similar constitutional objection may be raised, Even posteriorly, Even if we say that this bill or this law will apply only prospectively, another constitutional objection can be raised and that is the liberty of contract. ~~Because~~ the Constitution also says that no person shall be deprived of liberty, which includes liberty to contract, without due process of law.

SENATOR MACEDA. As I said, Your Honor, ^{I believe} this could be justified under the ...

SENATOR LAUREL. Police power of the State.

SENATOR MACEDA. ^{Yes,} ~~Just~~ police power of the State.

SENATOR LAUREL. I am in agreement with Your Honor on that point.

SENATOR MACEDA. That would take precedence over this.

SENATOR LAUREL. But if Your Honor concedes that this is part of the police power of the State, we should be consistent. We should apply it not only ~~to~~ retroactively but prospectively, or vice-versa.

SENATOR MACEDA. Maybe we can solve the problem by putting in a separate paragraph and then put in the usual clause that if any part of the bill is declared unconstitutional, then all the other ^{parts} remain in effect.

SENATOR LAUREL. There is already a provision here in Section 5.

SENATOR MACEDA. Yes. Well, that would take care of the situation ^{by} providing for a separate paragraph to put in Your Honor's suggestion to make this applicable to existing contracts.

SENATOR LAUREL. Because we should first be convinced that such ^{a provision} ~~an act~~ is constitutional, and ~~then~~ the moment we are convinced, we should apply it ^{all} through time, regardless of whether it is posterior or anterior.

Well, it is just something that I thought the ^C committee could take into account because it is a basic point.

SENATOR MACEDA. Well, thank you, Your Honor.

SENATOR LAUREL. I would like to go to another point, Mr. President. May I know the coverage of this bill? According to the explanation of the distinguished sponsor, this bill would apply to all ~~transactions~~ ^{transactions} on real estate ^{the property is in a} or installment basis, regardless of whether ~~it is~~ rural or urban areas.

SENATOR MACEDA. Yes, Your Honor.

SENATOR LAUREL. Therefore, this will apply to land reform areas.

SENATOR MACEDA. It ^{will} ~~would~~, Your Honor.

SENATOR LAUREL. This ^{will} ~~would~~, therefore, have the effect of amending the

SENATOR MACEDA. In what sense, Your Honor?

SENATOR LAUREL. In the sense that the Land Reform Code also covers transactions between landlord and tenants regarding the acquisition of the lands ~~that~~ ^{tenants} they are working on on an installment basis. There is such a provision in the Land Reform Code. Because you will remember, Mr. President, that we recently enacted a land reform measure ~~asking to~~ ^{amend} the Land Reform Code. And one of the provisions of that Land Reform Code is to enable the tenant to become the owner of the land that he is tilling. We, therefore, had ~~in~~ ^{specific} sections prescribing the method of acquisition. One of them is through installment sale. [?] May I know, therefore, whether it is the intention of this bill to cover such transactions?

SENATOR MACEDA. Well, our intention was really to include all of these transactions. And I believe that since this gives additional rights to the purchaser, there ^{will} ~~would~~ be no basic conflict with the provisions of the Land Reform Code.

SENATOR LAUREL. If that is the intention of the measure, would that not have the effect of discouraging the sale by installment to tenants? Because that would be prejudicial to the landlord and, therefore, he would be discouraged from selling to the tenants.

SENATOR MACEDA. I don't believe so, Your Honor, because the landlord usually, in the case of land reform areas, is really not over-desirous to get back his property because he cannot keep it just the same. He has to dispose

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it to some other tenants. In practice, I think the periods here are reasonable enough for any well-meaning landlord or subdivision owner.

SENATOR LAUREL. ^{Did} Has Your Honor invited to the hearings of the ^C committee

representatives of the landlords

SENATOR MACEDA. Yes, we did invite them, although this particular point was not really brought up in the hearing.

SENATOR LAUREL. In other words, landlords in land reform areas.

SENATOR MACEDA. No, we did not invite them as such.

SENATOR LAUREL. ^{Because} During the hearings of the special committee on land reform, we did invite representatives of the landlords, particularly ~~thinking they were~~ represented by former Ambassador Gallego and Mr. Moreno.

And they testified that ~~under~~ the present setup of the funding procedure, whereby ^{Project} the landowner who sells land to the Land Reform Administration are paid ninety per cent in bonds and ten per cent in cash, ^{is} ~~they found that~~ not attractive enough.

Now, my question is this. Under the Land Reform Code, the Land Reform ^{Project} Administration, ~~is~~ now the Department of Agrarian Reforms, acquires land from the landlords and then sells to the tenants. What would be the effect of this ^{measure on} to that particular arrangement? Will this also bind the Department of Agrarian Reforms ~~to include similar provisions in the contract~~ ^{is}

~~SENATOR TAMANO.~~ Mr. President.

~~THE PRESIDENT.~~ Gentleman from Lanao del Sur.

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SENATOR TAMANO. Will the distinguished sponsor yield to some points of clarification?

THE PRESIDENT. The gentleman may yield if he so desires.

SENATOR MACEDA. Willingly, Mr. President.

SENATOR TAMANO. First of all, Mr. President, I would like to congratulate the distinguished ^{gentleman} ~~senator~~ from Laguna and Ilocos Sur for this bill which, as he says, is intended to be a protection ^{for} to the small consumers.

SENATOR MACEDA. Thank you, Your Honor.

SENATOR TAMANO. Already, Mr. President, the nation and the Senate is reaping a harvest of the experience and the brilliant mind that the distinguished sponsor brings to the Senate, but I would like to clarify certain points which, I believe, are of equal importance.

May I first inquire, Mr. President, what will be the effect of this bill on existing contracts, ~~on~~ real estate, considering the constitutional provision on the non-impairment of contracts?

SENATOR MACEDA. Well, I believe, Mr. President, that this, probably, will not be allowed to apply to existing contracts.

SENATOR TAMANO. I see. So this will have a prospective application.

SENATOR MACEDA. I believe so, *Your Honor.*

SENATOR TAMANO. Now, ^{on} in this concept of the sale of real estate property on installment payments wherein commercial buildings are excepted, what is the idea of the distinguished sponsor with respect to condominiums? Are they included within this concept?

SENATOR MACEDA. The condominiums are included, Your Honor.

When ~~we~~ are ~~excepted~~, commercial buildings, it ~~means~~ means that everything other than commercial buildings is included. By commercial buildings, we refer to big office buildings ^{which} that are not really the subject sought to be covered by this bill. We did discuss this in the hearings and we saw the light of excepting commercial buildings; but we also did specify that condominiums should be included because they are the latest edition, so to speak, or counterpart of the ordinary house ^a and lot in the suburbs. If the gentleman will present a clarifidtory amendment at the proper time, we would be happy to specify, although we already consider ^{condominiums} it as included.

SENATOR TAMANO. Thank you, Your Honor. But what is the rationale for excluding commercial buildings from the purview of the bill?

SENATOR MACEDA. Well, the transaction ⁱⁿ commercial buildings ^{are} usually ~~of~~ of big amount and they involve businessmen who are really in a position to protect themselves.

~~Senator Laurel.~~

~~...to the tenants. What would be the effect of this bill on that particular arrangement? Will this also bind the Department of Agrarian Reforms to include similar provisions in the contract of instalment sales with tenants?~~

SENATOR MACEDA. Under the intendment of the bill, Your Honor, all of those were included, although we do not have any strong feelings about it. In that particular case, since it is a contract between government and tenant, we may probably safely exclude it from the ^{operation of this measure.} ~~authorization.~~

SENATOR LAUREL. Does Your Honor not think we should exclude such transactions, considering that they are special transactions?

SENATOR MACEDA. Yes, Your Honor. Well, the principal intendment of the bill is really to cover subdivision instalment sales for residential purposes. And in the case mentioned by Your Honor where the government has already stepped into the shoes of the vendor, then I suppose, we can presume that enough protection is already available.

SENATOR LAUREL. So, it is not the intention of the Committee to include such transactions under this measure?

SENATOR MACEDA. Well, the Committee will be very frank to admit that we never even considered the point, Your Honor.

SENATOR LAUREL. May I go to the third point, Your Honor. According to this bill, a buyer who has not fully paid the instalments will

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be allowed to dispose of the property.

SENATOR MACEDA. Yes, Your Honor.

SENATOR LAUREL. Who is the owner of the land at that point?

In other words, A buys property from B. A has paid ^{the installments for} two years. ~~years~~

~~But~~ Therefore, under this measure, he may be allowed to dispose ^{of} or

alienate ~~to~~ this property. Under the concept of ownership in the

^{New} Civil Code, there are certain attributes of ownership; among them,

ius disponendi, ius utendi, ius fruendi, and ius abutendi. Now,

these attributes belong to the owner. The question is: Who is the

owner at that point when ~~the~~ instalments have been paid but not in

full?

SENATOR MACEDA. Well, if Your Honor will refer to the ~~article~~

provisions of the bill, he is only allowed to sell his rights—not

the property.

SENATOR LAUREL. Yes, and what are those rights?

SENATOR MACEDA. Well, he is allowed to get somebody else to

step into his shoes.

SENATOR LAUREL. In other words, ^{is} subrogation.

SENATOR MACEDA. Yes.

SENATOR LAUREL. But ^{more} ~~not~~ specifically...

SENATOR MACEDA. This ^{is} ~~was~~ intended, Your Honor, to remedy the usual provision, and this was brought up in the hearings by the representatives, ~~the~~ I believe, ^{of the} ~~the~~ government employees associations. ~~But~~ In many cases, even if they already have a buyer ~~reasonably~~ available, some subdivision owners, under the terms of the contract, will not allow them to sell their rights.

SENATOR LAUREL. This is a very important point, ~~Your Honor~~, and I am glad ~~that~~ Your Honor has clarified it. In other words, this bill does not vest in the buyer the attributes of ownership.

SENATOR MACEDA. If that is not already provided ^{for} by the contract, because, I think, we have ^{to make a distinction} to distinguish, Your Honor, there are certain transactions where ownership is immediately transferred, although the general rule is that it is not. As a matter of fact, ^{reminded} Mr. Santice of the COGEO was precisely, during the hearings, pressing for this point ~~that, maybe, after a certain period—two or three or five years—well,~~ Well, depending on the studies of the Committee, it could be provided in this proposed bill that, immediately, ^{be} ownership ~~is~~ transferred and what remains is already an obligation, ^{to pay the balance.}

SENATOR LAUREL. Yes, but that is not covered by this measure,

Your Honor.

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SENATOR MACEDA. That is ^{it} ~~the~~. It is not covered by ^{this} ~~that~~ measure.

SENATOR LAUREL. Yes, ~~the law~~ ^{even} so that ~~it does not~~ ~~of the~~

after two years of payment of instalments, ~~even~~ if there is still

an unpaid balance, the rights of ownership remain with the owner.

SENATOR MACEDA. Of course, Your Honor, if that is the basic

contract.

SENATOR LAUREL. Therefore, the only rights that a buyer, who has not paid in full, ^{can} ~~to~~ transfer are, according to Your Honor, whatever rights he has. ^{It} ~~That~~ is just to place the third person, who will buy from the buyer, in possession of whatever rights he has at that moment. In other words, it is a mere subrogation. The owner, who has not ~~been~~ fully paid, retains his rights of ownership, which include the right to dispose. Therefore, while the buyer can transfer his rights - whatever they are - the seller can also transfer his rights, whatever he has retained.

SENATOR MACEDA. No, Your Honor. Under the intent^dment of the bill, since we are allowing the buyer to sell his right^s, and that is precisely what he is allowed, it means to say that the owner, at the same time, should not be allowed to dispose of the property.

SENATOR LAUREL. That is the point I would like to be very clear on, Mr. President, because that will bring about a lot of litigation. Normally, when a ^{person} ~~seller~~ sells a piece of land ^{on installment,} it is spelled ~~with terms and conditions~~ very clearly in the contract as to what rights are conceded to the buyer ~~on installment~~ immediately.

SENATOR MACEDA. Yes. If Your Honor will notice, ^{all} the contractual provisions are ^{tilted} ~~all~~ [^] ~~weighted~~ in favor of the subdivision owners.

SENATOR LAUREL. Yes. That is understandable because they prepare the contract. ^{Their own} ~~They should~~ lawyers ^{and they} prepare it. ^{It is airtight,} ~~in favor of their~~

~~the~~ as far as they are concerned. In fact, it is even one-sided. If the case goes to court, they are already supposed to pay 25 per cent attorney's fees usually. I just want to be very clear ^{on this point} so that we can avoid litigation ^{later}. Suppose a ^{person} ~~seller~~ sells a piece of land and he says, "I retain the rights of ownership. I only yield to you the right to possess. You may build a house on that piece of land right away." Now, can the owner, who is not fully paid, still sell or transfer his rights to another person under this bill in that given instance?

SENATOR MACEDA. Frankly, Your Honor, our intention is to first give the buyer the right to dispose of his rights and try to get back as much money as he can, ^{and} The owner should not refuse that. If we agree to Your Honor's proposal or suggestion, then in effect it will nullify the ...

SENATOR LAUREL. Precisely. That is my point, Your Honor. It may be self-defeating.

SENATOR MACEDA. ~~Isa.~~ Well....

SENATOR LAUREL. That is why I would like that to be very clear. When I asked Your Honor what rights can the ^{buyer} ~~seller~~ who has not fully paid, transfer, Your Honor answered, "Whatever rights he has." Now, what are the rights of the buyer who has not fully paid under this measure? That is the question. That is very important, Your Honor. So that we will know what rights he can transfer or assign. Can he, for instance, claim that the title should be issued in his name so that he can use it, say, as collateral to acquire

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a loan?

SENATOR MACEDA. No, I do not believe so, Your Honor. If he has not fully paid, then, really, the title should ^{be} not transferred to him yet.

SENATOR LAUREL. I am for this bill; it is a good bill. I was just thinking of the ~~bill~~ consequential litigation^s that will arise after this bill becomes a law, unless we spell out clearly what are the rights of both parties - what rights are yielded and what rights are retained by the owner.

SENATOR MACEDA. We would be happy to consider any specific amendment in that regard.

SENATOR LAUREL. Thank you.

May I go to another point. There is a principle in civil law, Mr. President, which is quite popular in the law schools. It is called caveat emptor, which means ^{"let the} buyer beware." Are we in effect throwing away that principle ⁱⁿ ~~the~~ civil law?

SENATOR MACEDA. Well, we did discuss that matter in the public hearings, Your Honor. In effect, as I said, under the police power of the state and for the protection of the consumer, we are ~~not~~ ^{accepting} the realities of the situation where most of the buyers are really forced to accept these standard contracts without too much choice. We are, in effect, ~~making~~ an exception to that.

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SENATOR LAUREL. We are abandoning that particular doctrine.

SENATOR MACEDA. In this particular case of real estate ^{transactions on} installment payments.

SENATOR LAUREL. That is a long-standing doctrine which we learned immediately in ~~the~~ law school. In fact, in first year law we were taught Roman law, and that was one of the first doctrines ~~that~~ we learned that the buyer must beware. He should read the contract before signing it.

SENATOR MACEDA. If Your Honor will read all the thick reams of new legislation ^{from} ~~on civil law~~ of other legislative bodies of the world, including the United States, ^{as well in civil law countries,} the trend now is towards so much protection for the consumer. And, really, ~~I think~~

~~Senator Maceda~~

~~and, really,~~ I think there has been a general abandonment of that ^{doctrine.} law.

SENATOR LAUREL. Well, I am glad to hear that because I am also in accord with at least a partial abandonment of that ^{doctrine} law so that there will be less suckers. We should help those who cannot help themselves. And, perhaps, this is one way of balancing the situation.

~~Senator~~ Usually, the real estate owner is well-to-do and can hire a battery of lawyers who can prepare the contract in fine prints, in legal jargon, and it will be very difficult for an unschooled ^{person} or a non-lawyer to understand the terms. I just want to be sure because this ^{New} also affects certain provisions of the Civil Code.

Now there is one final point, Mr. President. That is, if, as clarified by the distinguished sponsor, this will apply only to contracts entered into after the effective date of this law, two possible consequences might result: first, it might induce sellers to antedate deed ^{of} sale so that this law will not apply; second, it might induce sellers to enter into a contract ^{of} loan instead of sale. In other words, ~~the same~~ ^{will} it appear that the seller is the one borrowing money from the buyer. So that after certain amounts have been borrowed, ^{then} that is when the sale is consummated. ^{That} ~~This~~ ^{measure.} is one way of going around this law.

SENATOR MACEDA. Well, it will be a matter of implementation, Your Honor. And as brought out by the distinguished gentleman from Lanao,

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there is even a possibility that financing arrangement^s may be used.

But in that particular case, I said ~~that~~ it will still be covered. Now, if the terms of the loan and the facts and factors surrounding the ~~same~~ ^{same} show that it is actually a cover for a real estate transaction, then I am sure ~~that~~ the courts will construe it in favor of coverage by this bill.

SENATOR LAUREL. ~~You mean,~~ One way of doing it would be like this, for instance: A is the owner of the land and B is the buyer. They do not want to be covered by this law. So they enter into a loan agreement. A, the owner of the land, borrows so much money to be ^{given to} ~~paid~~ ^{an} by him on installment basis. He will offer the land as security for the loan. When enough money has been turned in by the buyer, then they will make it appear that there was failure on the part of A to pay the loan and so the lender forecloses the mortgage. Eventually, the land becomes his. In other words, they can go around this law.

SENATOR MACEDA. Well, once a mortgage comes into the picture, I am quite sure, Your Honor, that it becomes the deciding factor in favor of coverage by this law.

SENATOR LAUREL. Does Your Honor mean to say that this covers mortgages?

SENATOR MACEDA. Because it does not speak of sales, ^{As such}
alone. I it says "all transactions or contracts involving the sale of
real estate property x x x"

SENATOR LAUREL. But it is reverse, ^d Your Honor. The one borrowing
is the owner of the land. It is the owner of the land borrowing from
the buyer, and the buyer is lending money by installment. The owner
of the land offers his land as security or collateral. If there is
failure to pay the installment, ^{there is} ~~he will~~ ^{not} foreclose ^{me}. In other
words, the situation is reverse. ^d

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SENATOR MACEDA. Well, as I said, it would be a matter of evidence showing what the real intent of the parties is. But ^{as a} ~~the~~ general rule, considering the usual commercial sales of real estate property on installment, ^{Your Honor's example} ~~would~~ (would be really more of the exception in regard to ~~the~~ individual transaction, rather than on the mass transaction basis. But even then, it would be really, as I said, a matter of determination of what is the intent of the parties, Your Honor.

SENATOR LAUREL. ^{No,} Your Honor, ^{(It is just that} it is not that. ^{not} I am under-estimating the talents of the lawyers of the landowners. They can usually hire the best legal minds to draft a contract which will fall out of the ambit of this ^{measure} ~~law~~.

SENATOR MACEDA. Well, if the buyers will go to Your Honor and his lawyers at the CLASP, then I think they will be equally counterbalanced.

SENATOR LAUREL. ~~Well,~~ the CLASP cannot handle too many cases. We are shorthanded. But we handle some cases of that sort. That is why we happen to know that this has been done.

~~Well,~~ those are just my preliminary observations, Mr. President, and during the period of amendments I will try to introduce some amendments.

Thank you, Mr. President.

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SENATOR MACEDA. We are very grateful for Your Honor's thoughts.

SENATOR PADILLA. Mr. President.

THE PRESIDENT. The gentleman from Pangasinan, ^{and Manila.}

SENATOR PADILLA. Will the distinguished author and sponsor of this bill yield to some questions?

THE PRESIDENT. The gentleman may yield if he so desires.

SENATOR MACEDA. Willingly, Mr. President, to my distinguished professor.

SENATOR PADILLA. Has Your Honor considered Article 1592 of the Civil Code?

SENATOR MACEDA. Yes, Mr. President. Upon the suggestion of the distinguished gentleman from Pangasinan ^{and Manila,} we included that in our study. As a matter of fact, I did mention ^{it} in my sponsorship speech -- ^{when Your Honor} ~~I think the gentleman~~ was not yet here -- that Your Honor did inform this humble representation that this bill has been made necessary by Supreme Court decisions ~~in~~ interpreting Article 1592 of the Civil Code.

SENATOR PADILLA. For the record, Mr. President, Article 1592 provides:

8 pt. ("In the sale of immovable property, even though it may have been stipulated that upon failure to

8 pt.

pay the price at the time agreed upon the rescission of the contract shall of right take place, the vendee may pay, even after the expiration of the period, as long as no demand for rescission of the contract has been made upon him either judicially or by a notarial act. After the demand, the court may not grant him a new term."

10 pt.

Now, this Article 1592, formerly Article 1504 of the Spanish Civil Code, is an exception or ~~even~~ an amplification of Article 1191 which ~~says~~ ^{provides}.

8 pt.

"The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him."

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible."

10 pt.

← Now, the third paragraph is important:

8 pt.

"The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period."

10 pt.

So, under Article 1191, in a contract of sale, say, of real property, like the one ^{contemplated} in Your Honor's bill, even if the buyer or the vendee fails to comply with his obligation — which is mainly the payment of ^{the agreed} a price, particularly if the payment of the price is ^{by} ~~in~~ installment, whether monthly or

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annually, and the vendee has been given time to pay -- even if there had been default, the ~~right~~ to rescind the contract -- more accurately, the right to resolve the reciprocal obligation^p -- is not absolute, according to many correct decisions of the Supreme Court. It is not absolute because the court may, in its discretion, especially for a good cause, grant the defaulting party -- in this case, the buyer -- time to pay. And other correct decisions hold that a contract cannot be rescinded except for a fundamental or substantial cause which would defeat the purpose or intent of the parties in entering into ^{the} a contract. So that if the breach is casual or slight, that is not a ground for rescission.

These are some important rules in ~~the~~ Civil Law. But in addition to this basic provision in Article 1191, which formerly was Article 1124 of the Spanish Civil Code, the law provides for another privilege on the part of the buyer under Article 1592. So that ~~even if there be stipulation that upon~~

~~SENATOR [unclear]~~ even if there be a stipulation that upon default of the buyer to pay two or three installments - and sometimes in some contracts now, even one installment - the contract shall automatically be cancelled at the option of the vendor, I repeat, even if there be such a stipulation under Article 1592, the debtor (who is the vendee), in the payment of the price, can still pay even after the expiration of the period stipulated in the contract. case where the court will not grant him further time And the only ~~time he cannot do that~~ (is after there has been a demand not to pay, a demand to ^{rescind} resolve the contract by judicial or notarial act. So, Your Honor, it seems to me that Your Honor's bill is in consonance with these fundamental principles.

Now, in ^a ~~the~~ previous interpellation, it has been asked: when is the ownership transferred? Ownership is transferred ^{not by the consent of the parties, and} ^{even} not by the payment of the price but by the delivery of the ^{property sold,} ~~thing~~ because delivery, by tradition in consequence of contracts, is the mode of acquiring ownership under Article 712 of the Civil Code. So, even if the purchaser has not fully paid the price, so long as there has been delivery, transfer of possession ^{or} and of ownership, the title has been transferred to the buyer and the buyer only becomes a debtor as regards the payment of the price.

However, there is an article in ^{our} ~~the~~ Civil Code, which provides that the parties may stipulate that so long as the price has not been fully paid, the owner may retain the ownership of the thing sold. ^{It} ~~is~~ the principle of caveat emptor ^{which means} that the buyer buys the thing at his risk, ~~the~~ ^{the} ~~buyer~~ ^{buyer}.

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imposes upon the buyer the duty
~~writes~~ (to check the status of the thing he buys, although it is the
of the property he sells
 legal obligation of the vendor to warrant the title and that it is free
 from defects.

Now, as regards the sale of personalty, is it not true that we have
 also a special provision in Article 1484?

SENATOR MACEDA. Yes, Your Honor, Article 1484.

SENATOR PADILLA. And Article 1485. So, with regards to the sale
 of immovable property under Article 1592, as distinguish^d from the sale of
 personal property under Article 1593, the ~~there is~~ *in Article 1592* special provision
~~which fortifies~~ *the general rule in Article 1191* and even gives a special privilege to the buyer in the case
 of sale of immovable property.

Now, ~~many~~ *some* decisions of our courts have ~~held that~~ *upheld a* stipulation *which provides*
 that if the vendee fails to pay or comply with his obligation, ~~that~~ *such a default* will
 justify the unilateral or automatic ^sre~~ci~~ssion of the contract of sale, as
~~what they call~~ *is known as* a facultative and resolatory condition, ~~well,~~ *ruling* that ~~principle~~
 is correct in a case like the De la Rama Steamship Company vs. National
Development Company and Judge Tan, ~~where there was~~ *which involved* a contract of management *of*
 the three Doña vessels belonging to the Government or the NDC ~~were~~ *and* entrusted
 for management to the De la Rama Steamship Company, ~~and~~ *expressly* It was provided in
 the contract that if after two years of operation the management is not
 profitable or satisfactory to the NDC, the NDC can cancel the contract

after one year notice. Now, as Government Corporate Counsel, I sustained
and
the validity of that stipulation as a facultative ~~or~~ resolutive condition
without the need of a previous judicial act^{ion} which is contemplated in

Article 1191. However, other decisions have come out quoting only a
of that decision, a special
portion that if there is ~~such~~ stipulation, the contract may be rescinded

by the vendor even without judicial action. Now, I believe that generalizing
the rule
~~It~~ is not correct, because it must be a reasonable stipulation similar to
Tan
the De la Rama vs. Judge and NDC case.

Now, there is another point, Your Honor. According to some decisions,
Article 1592 does not apply to a contract to sell or a bilateral promise
it has been held that Article 1592
to buy and sell. In other words, ~~the law says that this~~ (is only applicable
to a contract of sale and not to a contract to sell. Does Your Honor
agree ^{to} ~~with~~ that distinction insofar as Article 1592 is concerned?

SENATOR MACEDA. Well, yes, Your Honor. The point has been raised here in the research given to me by my staff, ~~and~~ the latest one being the case of Manuel vs. Rodriguez, GRL-13435, July 25, 1960. Now, based on what I have learned in law school, there ^{doesn't} seem to be ^(any) difference between a contract of sale and a contract to sell, but there has been a distinction made in this case. That is why taking a look now ^{at} the amendment by substitution ~~that~~ we have presented, I was wondering, when Your Honor started interpellating, whether in Section 2 which says ^{"In all"} "the transactions and contracts involving the sale," we have to add, by virtue of this decision, ^{the words} "OR TO SELL" — "the sale of or to sell real estate" — ^{to} precisely clarify that we are ~~just~~ trying to remedy this particular situation.

SENATOR PADILLA. Yes, Under Article 1479 of the Civil Code, a promise to buy and ~~to~~ sell a determinate thing for a price certain is reciprocally demandable. So, so long as the parties have agreed on the sale of the property and the consideration therefor, ~~they are~~ the valid ^{are present} requisites of a contract and they are reciprocally demandable in the sense that reciprocal obligations have arisen in the same manner as in the contract of sale. Now, as far as ^{the} ~~this~~ reciprocal obligation ^{is} ~~is~~ concerned, ~~the~~ Manresa and many other Spanish authors have ^{that} ~~no~~ stated, there is no difference as regards the obligations arising from a contract of sale and a contract to sell or a bilateral contract or promise accepted to buy and sell.

SENATOR MACEDA. I remember, Your Honor, that Judge Ricardo Fune was my professor in obligations and contracts and he was a strict believer of Manresa and that is why I said, as I remember from what I have learned, that there ^{is} was no difference.

SENATOR PADILLA. Well, there are decisions, Your Honor, one of them by Justice Imperial in Philippine National Bank vs. Ah Sing, ^{69 Phil. 611,} and some Court of Appeals decisions by Professor, then Justice Capistrano, quoting Manresa, ^(holding very clearly reciprocal p. are) ~~precisely stating~~ that as far as the obligation ~~is~~ involved, there is no difference because they are both reciprocally demandable, and they give rise to the obligation of the vendor to ~~deliver~~

~~Senator Padilla~~

~~to~~ to the obligation of the vendor to deliver and of the buyer to pay the price.

Now, there are decisions, Your Honor, that say that Article 1592 does not apply to a contract to sell -- in other words, ^{a contract to sell where the} ~~price~~ is payable on installments. If that is true, how ^{should} ~~can~~ we ^{interpret} ~~possibly~~ ^{which precisely provides} ~~this provision~~ Article 1592 that the vendee may pay even after the expiration of the period? Does not Your Honor believe that ^{said} ~~this~~ Article 1592, precisely, is more applicable to a contract ^{to sell an} ~~of~~ ^{immovable} ~~of~~ property ^{whose price is} payable on installments when the debtor has been given time to pay? Because the article says ^{that} the vendee may pay even after the expiration of the period.

So, if there should be any distinction, I believe the court should ^{hold} ~~say~~ that Article 1592 is more appropriately applicable to a contract to sell or a contract of sale where the purchase price is not paid immediately upon the execution of the contract but is payable with a period ~~or~~ on installments, or the buyer has an obligation

SENATOR MACEDA. Well, I agree with Your Honor. However, we thought that by clarifying it in a special law such as this, ^{it} ~~this~~ would settle all these matters once and for all. ^{We are} ~~I am~~ grateful for the assistance that Your Honor has given us so far on this particular bill.

SENATOR PADILLA. I understand Your Honor said that this bill 62
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if enacted into law, will only be prospective because Your Honor is afraid that it might impair the obligations of contracts.

SENATOR MACEDA. Yes, Your Honor, I said that.

SENATOR PADILLA. Now, considering the questions or the explanations that I made, ^{have} would there really be a conflict between this bill and the basic philosophy underlying ^{Article 1191 and more particularly} ~~this~~ (Article 1592?)

SENATOR MACEDA. Well, after Your Honor's very enlightening explanation, there doesn't seem to be a basic conflict. There doesn't seem to be.

SENATOR PADILLA. And if this bill ~~is enacted~~ follows the underlying philosophy of Article ^{1191 and} 1592 without, of course, the particulars mentioned in this bill regarding, for example, the surrender value and how much is the refund, what is the period that is provided for, it would seem that this bill, if enacted into law, will not impair the obligation ~~of~~ of existing contracts.

SENATOR MACEDA. Well, Your Honor, the more I am convinced now. The earlier suggestion of the gentleman from Batangas was that maybe we can insert a specific provision here by ^{way of} amendment. ~~mean,~~ Anyway, if ever it should be questioned, then the court ^{should} decide. ^{Other-} wise, ^{it} will be subject to the separability clause which we have in the proposed bill. And I would welcome Your Honor and the gentleman from Batangas collaborating on the actual amendment in that regard.

SENATOR PADILLA. Your Honor, ^{on} page 2, for example, line 21, it says: "notice of cancellation sent by registered mail." Why don't we adopt ^{the notice provided in} Article 1592? The notice ^{should} ~~must~~ be made judicial ^{ly} or by notarial act to be in consonance with Article 1592, ^{Unless} the intation is to amend Article 1592 insofar as the form of notice of ^{reissuon} ~~reissuon~~ is concerned.

SENATOR MACEDA. Well, I would not mind adopting Article 1592 and, in addition, Your Honor, ^{just} give an alternative notice by registered mail. I was just trying again to give the vendee a longer period, considering that it would take time really for the vendee to receive notice by registered mail, especially under the present post office time delivery situation.

SENATOR PADILLA. On page 2, that is, Section 2, paragraph (b),
~~Your Honor mentions~~ ^{it says,} "equivalent to fifty per cent of the total
 payments made" and then, "additional five per cent every year but
 not to exceed ~~forty~~ per cent of the total payments made". Does this
 mean that the cash surrender value may reach ^{up} ~~to~~ ⁹⁰ ~~ninety~~ per cent of
^{the} payments made?

SENATOR MACEDA. Yes, Your Honor. And if I may explain, Your
 Honor, ^{during} ~~in~~ the hearings, in a draft, we excluded taxes and interests
 upon the initial suggestion of the subdivision owners and brokers.
 Obviously, they had a meeting and when they came back for the next
 hearing, they said, "Well, let us just have a straight rate because
 we will spend so much in accounting problems if we were to segregate
 what is taxes, what is interest, ^{will} ~~we~~ ^{to} just agree ~~on~~ a
 straight ~~fifty~~ ⁵⁰ per cent ^{of} all total payments." Although they were,
 of course, suggesting a ~~twenty-five~~ ²⁵ per cent basic rate, plus five
 per cent every year, the Committee felt that considering that real
 estate values really go up -- and after ^{the} five year ^{for} installments have
 been made, probably the property ^{has} ~~have~~ appreciated already in value --
 even if ⁵⁰ ~~fifty~~ per cent were refunded, the vendor will still get a
 highly priced property plus ⁵⁰ ~~fifty~~ per cent of the payments.

SENATOR PADILLA. That may be true, Your Honor, at the present

[time when there is inflation, when prices are going up. But suppose we return to the normal value of sales without this situation of inflationary trends. Now, under this situation where everything is going up, including the value of land sold, this may not really be too much. On the contrary, perhaps, the vendor may even be willing to return the cash payments, because by cancelling the contract, the subdivision owner or the vendor of the land may be able to sell it to other parties or enter ~~into~~ into other contracts at a more beneficial price. But we are not always legislating for abnormal times. Suppose there is no substantial increase in the value of the property even after the lapse of two or three, or four years,

Could Your Honor feel that ⁹⁰ ninety per cent ^{will} would still be reasonable?

SENATOR MACEDA. Well, ⁹⁰ ninety per cent would come in only Your Honor, after a ¹³ ~~9~~ ^{months} year payment. And at that time, Your Honor — ~~nine~~ ^{one} years out of ~~the ten~~ — normally a lot owner would try to retain his property. And it is ~~really~~ ^{only} in cases of extreme ~~extreme~~ inability already to complete the last year ^{payments} that ^{the vendee} he will agree to a cancellation. But, theoretically, Your Honor, under existing contracts, ^{one} you may have paid for nine years and ten months of installments and on the eleventh month of the tenth year ^{he} you defaulted, ^{his} and if there is only a one-month default provision in ^{his} your contract, ^{the} you forfeits

nine years and ten months of payments.

SENATOR PADILLA. ^{I believe,} That, is the wrong interpretation of the Civil

^w
Lap.

SENATOR MACEDA. Yes, Your Honor, ~~add~~ ...

SENATOR PADILLA. Because even if that provision were considered as a penalty clause, which is in the nature of a penalty, the Civil Code provides that the penalties under Article 1229 must not only be reasonable, not unconscionable, but the courts have discretion to temper or even reduce the penalty. In a situation like that, which Your Honor mentions, ^{ed,} that is really unconscionable, and it is against all concepts of justice and equity. And yet there have been some decisions upholding the ~~validity of that stipulation on the~~ ...

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the validity of that stipulation on the technicality that there has been a violation, a violation, which in Your Honor's example, may only constitute one month or even two months out of the remaining 10-year period or, maybe, 20-year period. I believe those decisions are erroneous. The courts of justice must interpret the contract in accordance with: first, the intention of the parties which was the sale of property, not ^{its} ~~the~~ cancellation; secondly, there has been a more than substantial compliance in good faith which is equivalent to ^{payment,} ~~con-~~ ^{less damages,} ~~pliance~~ according to Article 1234. And even if it were a valid penalty clause, or a valid pactum commissorium, the courts are not powerless to grant the defaulting party ^{an equitable} a remedy. As a ^{the third paragraph of} matter of fact, Article 1191, ~~paragraph 3,~~ precisely authorizes the court to grant the defaulting debtor, which in this case is the vendee, with regard to ^{his obligation to pay} ~~the payment of~~ the price, ^{(a reasonable} period within which to pay and Article 1592 allows ^{the buyer} ~~him~~ or ~~seller~~; gives him the right to pay even after the expiration of the period.

Well, thank you, Your Honor. I am in accord with the philosophy of this bill, especially to express the sentiment of Congress as to what is the fair solution ^{with respect} to some of these

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contracts of sale of immovable property where there has been a stipulation for automatic forfeiture and cancellation of ^{the} contract. Now, first of all, I don't ^{not} believe that there should be any automatic or unilateral cancellation or forfeiture of payments previously made, especially if they have been made for many years, regularly made, and then in a subsequent occasion there is a temporary default. Thank you, Your Honor.

SENATOR MACEDA. Thank you, Your Honor.

THE PRESIDENT. ^{As this} Any other interpellations?

SENATOR MACEDA . Mr. President, subject to the usual reservation for further interpellations, I move that we proceed to the period of amendments.

^{8 pt} SUSPENSION OF CONSIDERATION ~~OF S. NO. 755~~

10 pt SENATOR ROY. Mr. President.

^{The} THE PRESIDENT. Gentleman from Tarlac.

SENATOR ROY. I would like to ask for the postponement of ~~the~~ consideration of this bill. This bill is a very important ~~one~~ and it may be improved in the way of providing some amendments or some provisions for no other purpose than to remove some constitutional doubts about it. I am very much in favor of the bill, Mr. President. As a matter of fact, I

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have prepared a draft of an amendment declaring ^{the} a policy of the State ^{on} in this matter ^{such} as, for instance, to encourage the ownership of real estate, especially for housing, and to protect buyers on installment from the evils of onerous and unjust provisions ⁱⁿ of their installment contracts. Perhaps ^{in the} next session, Mr. President, we will be ready to propose amendments.

THE PRESIDENT. Has the Committee any ~~Committee~~ amendments to introduce?

SENATOR MACEDA. No ^{Committee} amendments for the moment, Mr. President.

THE PRESIDENT. In that case the Chair will entertain the motion of the gentleman from Tarlac that we suspend consideration of this bill....

SENATOR ROY. ^{until} In the next session.

THE PRESIDENT.until tomorrow, or the day after tomorrow. Is there any objection? (Silence.) There being none, ~~the~~ consideration of this bill is deferred.

SENATOR ROY. Thank you.

ADJOURNMENT OF THE SESSION

SENATOR PADILLA. Mr. President, I move that we adjourn the session until tomorrow afternoon at five o'clock.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the session is adjourned until tomorrow afternoon at five o'clock.
It was 7:55 p.m.

SENATOR PADILLA. Mr. President.

THE PRESIDENT. The gentleman from Pangasinan and Manila.

SENATOR PADILLA. With the permission of the gentlemen on the floor. May I suggest that we eliminate this entire paragraph, this section, because a term or a period under the Civil Code is intended ^{the benefit of} ~~as a term~~ for both parties.

THE
CHANGES IN THE MAJORITY REPRESENTATION IN/COMMITTEE
ON COMMERCE AND INDUSTRY AND THE COMMITTEE ON PUBLIC WORKS AND COMMUNICATIONS

*24/ Sen. Tolentino's
corrections*

SENATOR TOLENTINO. Mr. President.

THE PRESIDENT. The Majority Floor Leader.

SENATOR TOLENTINO. In view of certain changes in the majority representation in the Committee on Commerce and Industry and the Committee on Public Works and Communications, I would like to propose the amended composition of the majority representation in said committees. For the Committee on Commerce and Industry: Senators Almendras, Espina, Maceda, Laurel, Antonino, Benitez, Pelaez, Teves, Padilla and Tamano.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the motion is approved.

SENATOR TOLENTINO. For the Committee on Public Works and Communications: Senators Almendras, Antonino, Espina, Benitez, Laurel, Pelaez, Perez, Sumulong, Tamano and Maceda.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the motion is approved.

BILL ON SECOND READING
S. No. 775 - Protection to Buyers of Real Property
CONSIDERATION OF SENATE BILL NO. 775
(Continuation)

SENATOR TOLENTINO. Mr. President, I move that we resume consideration of Senate Bill No. 775 being sponsored by the distinguished gentleman from Laguna and Ilocos Sur, Senator Maceda.

THE PRESIDENT. Consideration of Senate Bill No. 775 is now in order. The gentleman from Laguna and Ilocos Sur has the floor.

SUSPENSION OF THE SESSION

The session is suspended for one minute.

It was 5:18 p. m.

RESUMPTION OF THE SESSION

The session was resumed at 5:19 p. m. with the President of the Senate, Honorable Gil J. Puyat, presiding.

THE PRESIDENT. The session is resumed.

SENATOR MACEDA. Mr. President.

THE PRESIDENT. Gentleman from Laguna and Ilocos Sur.

SENATOR MACEDA. During the last session wherein we considered this particular bill, we were about ^{to go to the period of amendments,} subject to the same reservations for any other questions that may come up. ^{Tarlac and Pangasinan} But ^{Laguna} the lady senator from Cavite and ~~Batangas~~ requested for some time to allow the Philippine Association of Realtors, Inc., otherwise known as PARE^B to submit a memorandum. Said association has already submitted and the committee has received the memorandum. The distinguished gentleman

~~Senator Maceda~~

has received the memorandum. Also, the distinguished gentleman from Batangas, Senator Laurel, has submitted to the Committee his proposed amendments, together with some amendments which are already printed in the "2nd Amendment by Substitution as of April 4, 1972."

So, Mr. President, if there are no further interpellations, I move that we go into the period of amendments.

THE PRESIDENT. We are now in the period of amendments, with the understanding that the subject of our deliberations is the draft of the 2nd Amendment by Substitution as of April 4, 1972.

The sponsor may proceed.

SENATOR MACEDA. Mr. President, on page 1 of the bill, we propose the insertion of a new paragraph to be known as Section 2 which is a declaration of policy. As suggested by the gentleman from Tarlac, the amendment, which the Committee adopts, reads as follows:

"SEC. 2. IT IS HEREBY DECLARED A PUBLIC POLICY TO ENCOURAGE THE ACQUISITION OF REAL ESTATE FOR HOUSING PURPOSES BY PROVIDING PROTECTION TO BUYERS THEREOF ON INSTALLMENT PAYMENTS AGAINST ONEROUS AND OPPRESSIVE CONDITIONS IMPOSED THEREIN."

I move for approval, Mr. President.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the amendment is approved.

SENATOR MACEDA. On line 9, Mr. President, between the words "sale" and "of," I move to insert the words "OR FINANCING."

THE PRESIDENT. Is there any objection? (Silence.) There being none, the amendment is approved.

SENATOR MACEDA. On page 1, lines 10 and 11, after the word "payments," insert the following: "INCLUDING RESIDENTIAL CONDOMINIUM APARTMENTS BUT EXCLUDING commercial AND INDUSTRIAL LOTS AND buildings AND SALES TO TENANTS UNDER REPUBLIC ACT NUMBERED THIRTY-EIGHT HUNDRED FORTY-FOUR, AS AMENDED BY REPUBLIC ACT NUMBERED SIXTY-THREE HUNDRED EIGHTY NINE." On line 12, delete the word "COVERED" up to and including the word "REFORMS," on line 13. The sentence continues with the word "where" on line 13.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the amendment is approved.

SENATOR BENITEZ. Mr. President.

THE PRESIDENT. The lady from Cavite and Laguna.

SENATOR BENITEZ. Mr. President, may I just ask the sponsor a clarification on page 2.

THE PRESIDENT. We are still on page 1. Is the sponsor through on page 1?

SENATOR MACEDA. Yes, Mr. President.

THE PRESIDENT. May the Chair inquire what happens to the proposed amendment here which says, "AND SALES TO TENANTS COVERED BY CODE OF AGRARIAN REFORMS"?

SENATOR MACEDA. I have already read the whole amendment, Mr. President.

THE PRESIDENT. Including that phrase?

SENATOR MACEDA. We deleted the words "COVERED BY CODE OF AGRARIAN REFORMS" appearing on lines 12 and 13, and in lieu thereof we inserted the actual Republic Act numbers.

THE PRESIDENT. So, the amendment was to strike out those words and, in lieu thereof, ~~the~~ to insert amendment read by the sponsor. That is clear now.

We are now on page 2.

SENATOR MACEDA. Thank you, Mr. President.

SENATOR BENITEZ. Mr. President, on page 2, I just want a clarification. ^{On} ~~Reading~~ line 5, my question is: Let us say, for instance, the vendee has exercised this right during the first five years of the contract and then he defaults again, can he or can he no longer avail of the benefit of this Act?

SENATOR MACEDA. The idea is to limit his right to be exercised once every five years. So, after he has defaulted within the first five-year period and exercised the right, he can only do so again after ...

SENATOR BENITEZ. Within the next five years?

SENATOR MACEDA. Yes, Your Honor.

SENATOR BENITEZ. That is quite clear now.

Another question for clarification: There is nowhere in this bill nor in the proposed amendments ^{provisions for the} protection ~~on the part~~ of the vendee ^{committed by} for ~~the~~ default ~~of the~~ subdivision owners -- for instance, they ^{but they do not construct} premise infrastructure ~~and yet it is not there~~. Is that contemplated, Your Honor?

SENATOR MACEDA. Yes, Your Honor. As I have said in my sponsorship speech, the hearings we conducted and the discussions that have provoked the filing of this bill have brought out so many problems with subdivisions and installment sales. We were faced with the problem as to whether to present an omnibus bill which would, probably, embrace, well, about 20 or 25 pages, including the creation of a real estate commission or a similar

office. And we felt that for the purposes of this Act, we would limit it to the matter of doing away with these automatic forfeiture clauses and cancellation of contracts so as, well, to simplify this bill and get through easier, without prejudice to the filing of a separate measures for other problems attendant to subdivisions and installment sales. If the lady from Laguna and Cavite will file the bill, I will be happy to co-sponsor it with her.

SENATOR BENITEZ. Well, I am glad to hear that, Your Honor, because the title of the bill seems to encompass such an intention -- "to provide protection to buyers of real estate property on installment payments." I think one of the most serious protections needed by the buyers would be along that line, which is ^{from} the fraud that is committed by subdivision owners in representing infrastructure improvements, such as sewerage and water, and ^{these} yet they do not ^{provide,} ~~deliberate~~ that and there is no way of redress. Here, I see that Your Honor has provided redress to the vendee only on the improvement that he himself has made on the property, but the converse is not included here.

SENATOR MACEDA. Well, I understand, Your Honor, that if there is such a contractual obligation to provide certain facilities and it is not so provided, let us say, within two years or whatever is the contracted period, and then the vendee refuses to pay, then it will be covered by the general provisions of the Civil Code on contracts. Under that

particular example, then the result would be that the vendee would
be justified in not paying his intallments if the vendor does not
comply with the contractual obligation to provide certain ^{improvements} ~~sales~~.

~~SENATOR BENITEZ. I was just thinking ...~~

SENATOR BENITEZ. *W* I was just thinking in terms of people who are not legally minded or informed. I feel that this is where the injustice comes. If they are lawyers or have law firms or counsellors, as Your Honor has said, there will be no difficulty ^{in getting justice.} But ~~not for~~ ^{if lay} people, ^{for example,} like ~~myself, who~~ ^{me or the teachers,} were to buy, ~~on teachers,~~ ^{it would be very difficult and expensive.} for example. Does it follow therefore that they are justified legally ^(if they do not pay when) in not paying because ^{certain} conditions have not been complied with?

SENATOR MACEDA. Yes, Your Honor, they would be justified legally. But the problem is that this representation to construct certain facilities is usually found only in the advertisements and brochures and are not actually found in the written contract. So, that is the way by which they have actually gotten over this provision. Now, if the stipulation is included in the contract itself, ~~then~~ there will be no problem.

SENATOR BENITEZ. Then ^(it is) the intention of Your Honor to file a bill subsequently to cover cases of fraudulent misrepresentations or offers ^{found} to sell, in literatures, ^{because that} ^(this) is a common practice where the brochures ^{are} ~~is~~ very attractive, and since the layman does not know how to read the voluminous legal document, ~~and~~ he signs this in good faith, ^{and} then, as Your Honor has pointed out, the gap is there. I would like to associate myself with any legislation that would protect the buyer or vendee on that particular spot because ^{this is one of the most numerous and} ~~I think that these are most of the~~ ^{complaints} ^(reaching) ~~that have come to~~ my office.

SENATOR MACEDA. Yes. As a matter of fact, it would be included specifically in the Omnibus Consumer Protection Law which Your Honor has filed and which, ^{as} I assured Your Honor, ^{about} is to be reported out today or tomorrow morning by the Committee.

SENATOR BENITEZ. Well, thank you, Your Honor. How about the penal provision for this? Are there no penal provisions or will they ~~be~~ be found also elsewhere?

SENATOR MACEDA. The bill contemplates only a restatement of civil obligations, Your Honor, and there was no penal provision that was contemplated by this humble representation when we filed the bill. The basic idea really is to prevent arbitrary forfeiture and, in case of cancellation, to have a cash surrender value.

SENATOR BENITEZ. Would it not strengthen the intention of Your Honor if there were some penal provisions here, considering that this is a very ~~usual case which occurs against~~ ^{fraudulent case occurring to} vendees on installment payments? Or is this covered elsewhere? I am not familiar with the legal implication of such an amendment like this.

SENATOR MACEDA. It would certainly strengthen the bill, Your Honor, but I am quite sure that it would run into ~~serious~~ serious objections from some members of the Chamber if, for ordinary contractual obligations, we consider certain violations ^{as} punishable.

SENATOR BENITEZ. Well, I will leave it at that, Your Honor. It is just that I feel that this is ~~just~~ ^{such} a popular case of injustice to people

on
who buy/installment payments that I raise the question of a possibility
of a penal provision. Thank you.

SENATOR MACEDA. Thank you very much.

Mr. President, on page 2, line 20, it has been ~~suggested~~ ^{proposed} that
~~propose~~ to delete the word "forty" and in lieu thereof insert the word
"NINETY", the reason being that this is an additional to the 50% basic
and therefore it is really 50% plus a maximum of 40%. That is not
really so big, Mr. President, because when we reach the 90% refund,
it means to say that we have already paid 13 years of installments.
So that if we refund 90% after 13 years, it means to say that the value
of the property itself must have increased by leaps and bounds already.
This is just a clarifying amendment, Mr. President.

THE PRESIDENT. Is there any objection? (Silence) There being
none, the amendment is approved.

SENATOR MACEDA. One line 21, Mr. President, after the word "Provided", delete all the words that start with "That" up to line 24 ending with the words "Provided, Further".

THE ~~SENATE~~ PRESIDENT. Is there any objection? ^(Silence) There being none, the ^aAmendment is approved.

SENATOR MACEDA. May I adopt an amendment of Senator Laurel, Mr. President? Still on page 2, on line 10; after the word "assign" delete the word "his", and in lieu thereof, insert the word "whatever".

THE ~~SENATE~~ PRESIDENT. Is there any objection? ^(Silence) There being none, the ^bAmendment is approved.

SENATOR ROXAS. Mr. President.

THE ~~SENATE~~ PRESIDENT. The gentleman from Capiz.

SENATOR ROXAS. Mr. President, I was listening during the sponsorship period in relation to this particular line, and I was going to propose, for ^{the} purpose of clarification, that this line read ^s as follows: "the right to sell his rights or assign the same". If Your Honor will recall, there were some interpellations in relation to the authority of the vendee to sell. And so, perhaps, for clarification, Your Honor, it would be better if this line reads as follows: "the right to sell his rights or assign the same to another".

SENATOR MACEDA. Well, Your Honor, I have no objection to that rephrasing.

SENATOR ROXAS. Well, thank you, Mr. President. I will propose amendment.
that ~~is~~

(Silence)
THE SENATE PRESIDENT. Is there any objection? There being none,
the amendment as proposed by the gentleman from Capiz is approved.

SENATOR MACEDA. On Page 3, line 1, Mr. President: beginning of
the line up to line 2, insert the words "UPON THE FULL PAYMENT OF THE
CASH SURRENDER VALUE TO THE VENDEE AND".

(Silence)
THE SENATE PRESIDENT. Is there any objection? There being none,
the amendment is approved.

SENATOR MACEDA. That was the amendment suggested by Senator
Tamano, Mr. President. And on line 3 to line 5: after the word
"cancellation" on line 3, insert the words "OR THE DEMAND FOR
RESCISSION OF THE CONTRACT BY A NOTARIAL ACT".

(Silence)
THE SENATE PRESIDENT. Is there any objection? There being none,
the amendment is approved.

SENATOR ROY. Mr. President.

THE SENATE PRESIDENT. The gentleman from Tarlac.

SENATOR ROY. Mr. President, may I ask for the reconsideration of
the approval of that amendment?

(Silence)
THE SENATE PRESIDENT. Is there any objection? There being none,
approval of the last amendment is reconsidered.

SENATOR ROY. On page 2, Your Honor, before I go to the part of the bill which has been reconsidered, on line 8, we have the following: "During the grace period and before actual cancellation of the contract, the vendee shall have the right to sell or assign his rights to another person or to reinstate the contract by updating the account." Suppose, Your Honor, the vendee shall antedate the contract by way of deception. He can do that, because under the provisions of the lines which I have read, he shall have the right to sell or assign his rights to another person or to reinstate the contract by updating the account. We have provisions here when he can do so. But, suppose he postdates the contract so that once he has acquired that right, ~~he can do so~~

~~he can do so~~

Senator Roy

After after notice to him, that is, after thirty days from receipt of the notice of cancellation or the demand for rescission of the contract by notarial act sent by registered mail, it is possible, Your Honor, that the vendee may manipulate the document transferring his right by placing the date in the contract.

SENATOR MACEDA. Well, Your Honor, this being real estate, as regards third persons not privy to the contract, as you know, it could only take effect after proper registration. Now, if the postdates and there is a cancellation, then there will be a cause of action between the vendee and the person to whom he has sold under a postdated contract under the general provisions of the Civil Code.

SENATOR ROY. Is it understood, Your Honor, that the instrument or the document whereby the vendee shall have the right to sell or assign his rights before actual cancellation of the contract be in a formal document duly notarized?

SENATOR MACEDA. Yes, Your Honor. We are trying to adhere to Article 1592 of the Civil Code as suggested by Senator Padilla.

SENATOR ROY. Can we not provide here, Your Honor, that the document of sale or assignment of the rights of the vendee shall be done by notarial act, so that postdating the document can be avoided? Because, you can just postdate an agreement when it is done through

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a notary public because that can be verified by the entry in the book of the notary public.

SENATOR MACEDA. Well, if Your Honor would like to suggest a proviso, we would have no objection to including that as a proviso to this paragraph.

SENATOR ROY. Just change the period to a comma (,) after the words "the account" on page 2.

SENATOR MACEDA. On line 12.

SENATOR ROY. Yes, on line 12, change the period to a comma and insert the phrase after the words "the account" "THE DEED OF SALE OR ASSIGNMENT SHALL BE DONE BY NOTARIAL ACT."

SENATOR MACEDA. I have no objection, Mr. President.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the amendment is approved.

SENATOR ROY. On page 3, Your Honor, beginning on line 21, we have the following: "OR THE DEMAND FOR RESCISSION OF THE CONTRACT BY A NOTARIAL ACT sent by registered mail." For purposes of the records, Your Honor, will Your Honor state what should be contained or recited in the demand for rescission by notarial act, this notice of cancellation?

SENATOR MACEDA. Yes, Your Honor. It would include the reason for the demand.

SENATOR ROY. For the rescission.

SENATOR MACEDA. For the rescission.

SENATOR ROY. Reciting the circumstances provided for in the law which should be a ground for rescission.

SENATOR MACEDA. Yes, Your Honor.

SENATOR ROY. I think the answer will be sufficient, Your Honor. I just want this to be stated in the records because this notice of cancellation may just say, by notarial act, say, under oath, that I am rescinding the contract without reciting the circumstances or the ground for rescission.

SENATOR MACEDA. Yes, Your Honor. We would, of course, expect that the reason for the cancellation would be in the demand letter.

SENATOR ROY. I have to ask this question, Your Honor, because some of these buyers on installment belong to the ... Well, I will not say to the less intelligent group, but most of them do not understand what is meant by notarial act and what could be recited in a notarial act. And there may be questions later, question may crop up in the court, if for instance, the notification of cancellation, say, by notarial act, simply says that he is asking for rescission of the contract. Thank you, Your Honor.

SENATOR MACEDA. Thank you, Your Honor.

SENATOR ROY. With that explanation, I am satisfied.

THE PRESIDENT. The approval of that last amendment was re-
considered.

SENATOR ROY. Well, I ask for the approval of that amendment,
Your Honor.

THE PRESIDENT. Is there any objection? (Silence.) There being
none, the amendment is approved.

SENATOR MACEDA. Thank you.

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SENATOR SUMULONG. Mr. President.

THE PRESIDENT. Gentleman from Rizal, Senator Sumulong.

SENATOR SUMULONG. Will the distinguished sponsor kindly yield?

THE PRESIDENT. He may yield if he so desires.

SENATOR MACEDA. Willingly, Your Honor.

SENATOR SUMULONG. On pages 2 and 3, it is stated "That the actual cancellation of the contract shall take place UPON FULL PAYMENT OF THE CASH SURRENDER VALUE TO THE VENDEE AND after thirty days from receipt by the vendee of the notice of cancellation OR THE DEMAND FOR RESCISSION OF THE CONTRACT BY NOTARIAL ACT..." Now, my question is: We are giving the vendee a grace period; and then if the grace period expires, we are still giving him, if he has made payments for at least two years, a chance to recover at least the cash surrender value which is equivalent to ^{fifty}~~five~~ per cent of all payments made.

SENATOR MACEDA. Fifty per cent, Your Honor.

SENATOR SUMULONG. Yes. Suppose the grace period has expired and the vendor, after the expiration of the grace period, delivers the cash surrender value, does the vendor need to wait for thirty days? Is the delivery of the cash surrender value ^{not} an act of cancellation? Why does he have to send a notice of

cancellation and still wait for thirty days from receipt sent by registered mail?

SENATOR MACEDA. Well, the reason, Your Honor, really is to further give him a final grace period of thirty days.

SENATOR SUMUDONG. Does it mean, Your Honor, that after delivering the cash surrender value the vendee can still sell and assign his rights to another?

SENATOR MACEDA. If the thirty-day registered mail notice has not been given, Your Honor, then the payment of the cash surrender value does not effect to actually cancel the contract. In effect, we are now requiring two conditions for actual cancellation.

SENATOR SUMULONG. Does that mean that the vendee can retain the cash surrender value and then still exercise his right to sell and assign his rights to another?

SENATOR MACEDA. No, Your Honor. If the vendor knows what he should do -- and I am sure he would usually know what to do -- he should not return the cash surrender value until he has given a notice by registered mail, wait for thirty days, and then give the cash surrender value. Because originally, Your Honor, the provision required only a notice by registered mail and a thirty-day ~~final~~ final grace period; and then after that we gave the vendor a period of ninety days within which to refund

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the cash surrender value. That is where the gentleman from Lanao del Sur said, "Well, supposing that he does not pay within ninety days?" Then let us make it clear that as long as he has not refunded the cash surrender value, and even if there has been notice of cancellation, there should be considered no actual cancellation of the contract until the money is refunded. So in effect now, we have two conditions for a cancellation: First, the notice; and, second, the payment.

SENATOR SUMULONG. So that under the bill, even after the expiration of the grace period and even after the delivery of the cash surrender value, the vendor still has to send a notice of cancellation.

SENATOR MACEDA. Yes, Your Honor, it could happen that way.

SENATOR SUMULONG. And then wait for thirty days from receipt of that notice of cancellation before the contract shall be considered as cancelled?

~~SENATOR MACEDA. But, I am sure...~~

~~Senator Sumulong~~

~~wait for thirty days from receipt of that notice of cancellation before the contract shall be considered as cancelled?~~

SENATOR MACEDA. But I am sure the vendors, Your Honor, will not do that. They will send first the notice of cancellation, wait for the thirty days before they give the cash surrender value. I am sure that they will not advance the cash surrender value before the actual notice and the 30-day period.

SENATOR SUMULONG. But why still make that requirement? I am fully in favor, Your Honor, that if the vendee has made payments especially for two years he should be given a grace period even though the contract does not provide for such grace period. I think that is reasonable. But suppose he does not take advantage of the grace period, I am still agreeable that he should be given a refund, what we call a cash surrender value. In spite of any lack of provision in the contract I think that by law it is reasonable to give them a grace period, then after the expiration of the grace period still give the vendee the right to recover at least one-half of what he has paid. But after failing to take advantage of the grace period, after receiving the cash surrender value, ~~I think~~ why still

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require ~~also~~ the vendor to send a notice of cancellation ^{by registered mail} and then wait for thirty days ^{from} ~~after~~ receipt of the notice of cancellation before the contract can be considered as cancelled? That leaves the vendor ~~as~~ hanging in the air. He does not know whether he can dispose of the lot until he has proof that the notice of cancellation that he has sent by registered mail was received. And, Your Honor, nowadays, considering the poor service being given by our post office, it is very hard. You send a notice of cancellation today, send it by registered mail, you have to accompany it with a registry return card; you will have to wait for a number of weeks and sometimes it is lost. In the meantime, the vendor has already paid the cash surrender value and still he does not know whether the contract is cancelled or not.

SENATOR MACEDA. Well, I fully appreciate, Your Honor, the doubts that have been entertained by the distinguished gentleman from Rizal, but, as ^{Your Honor} you know, we are only granting here certain rights to the vendee. So, I would think that if the vendor really is in a hurry and is willing to pay ^{immediately} the cash surrender value and the vendee agrees, he can go ahead and deliver the cash surrender value and at the same time get a written release from the vendee which would amount to a waiver of his right to

registered notice. ~~Because~~ there is nothing in the law that prohibits him from waiving. In that particular case if the vendor wants to expedite it, he can go to the vendee, give him the cash surrender value and a prepared waiver form. I think we are just giving him additional right. He can waive it, Your Honor.

SENATOR SUMULONG. I think that is a better position, Your Honor, because that will enable the vendor after the grace period has expired, to go to the vendee and say: "Here is the cash surrender value of your payments, please sign also this notice of cancellation." So that ^{the two requirements} ~~that~~ can be done together, but as now worded, Your Honor, he is not allowed to do that. He has to ~~sign~~ send the notice of cancellation by registered mail. So, would Your Honor consider a rewording of this provision so as to carry out your idea that the cancellation can take place upon payment of the cash surrender value and upon proof that notice of cancellation has been served on the vendee?

SENATOR MACEDA. Well, I have no objection. As I said, we are stating here the general rule that there must be two conditions that must concur before and after cancellation is allowed to take place. However, as I said in the earlier part of our debates, this does not remove this group of sales entirely out of the

general provisions of the Civil Code and, as far as rights are concerned, they are conferred by law especially for the protection of the vendee or certain persons. if they want to waive it, then that is their privilege. Now if Your Honor wants to make that clear right in this bill itself, then I would have no objection, Your Honor.

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SENATOR SUMULONG. Because with all due respect, Your Honor, in my humble opinion, the mere fact that the vendor is already giving the cash surrender value, that is equivalent to cancellation of the contract. But I am willing to accept the interpretation given by Your Honor and reword this provision so that the cancellation will be considered as having taken place upon payment of the cash surrender value and upon proof of receipt by the vendee of the notice of cancellation.

SENATOR MACEDA. So, we shall no longer require a notice by registered mail, Your Honor.

SENATOR SUMULONG. It is very hard. A notice, Your Honor, can be served personally, as Your Honor said. So, if it can be served personally, why require it to be sent by registered mail?

SENATOR MACEDA. Well, because, Your Honor, as you know, under the provisions for service of notice, if the notice is received by a responsible person, for example, in the house of the vendee, then there will be a constructive notice. Now, maybe, we could clarify this by inserting something like keeping the whole provision but providing for an additional clause — unless the vendee in writing waives notice by registered mail — something to that effect. — Unless this is waived in writing by

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the vendee — that is, I think, the concept that Your Honor is trying to introduce.

SENATOR SUMULONG. But why make a requirement that the notice of cancellation can only be sent by registered mail, Your Honor? Notices can be served under the Rules of Court. The best form of service is personal service. If you can ~~not~~ do it by personal service, then why send it by registered mail which takes a longer time, Your Honor? So, can we not just say: upon full payment of the cash surrender value to the vendee and after notice of cancellation has been served on the vendee.

SENATOR MACEDA. Well, Your Honor, as I said earlier, the intention really was to give him a further grace period between the time that the registered mail is sent out and the time when he actually receives it. This was really one of the reasons, besides assuring that notice is definitely served by the requirement of registry because under ^{the} present practice, of course, no notice at all is even required for a cancellation.

SENATOR SUMULONG. So he will be given a grace period two times. Once before the payment of the cash surrender value, and another grace period after payment of the cash surrender value.

SENATOR MACEDA. But as I said, Your Honor, the vendor should not really, and I don't think he will, pay the cash surrender value until he has complied with the notice requirement. In the natural course of business, they will not release the cash surrender value until the notice has been sent out.

SENATOR SUMULONG. But why prevent the vendor, Your Honor, from paying the cash surrender value if he is willing to pay the cash surrender value immediately after the expiration of the grace period and at the same time when he pays the cash surrender value he will also request the vendee to receive the notice of cancellation. Instead of requiring him to pay the cash surrender value and then after that go back to his house, write a notice of cancellation, and send it by registered mail.

SENATOR MACEDA. Well, the other reason, Your Honor, is, as I have already said, we were trying, upon suggestions of Senator Padilla, the distinguished gentleman from Pangasinan, to adhere to Article 1592 of the Civil Code as much as possible and Article 1592 talks of judicial or notarial notice.

SENATOR SUMULONG. But the important thing is that the notice of cancellation be sent and served on the vendee, Your Honor.

SENATOR MACEDA. Yes, Your Honor. I think our interchange here of interpretation, as already placed into the record, that the vendee may, upon receipt of the cash surrender value execute a waiver of ^{the} 30 days and registry notice that is provided [^] for in the law.

SENATOR SUMULONG. Why waiver, Your Honor? Can he not at the same time that he pays the cash surrender value, just deliver also to the vendee the notice of cancellation and make him sign "received" in a duplicate? It is to simplify, Your Honor. Why also put the vendor in the position of still sending the notice of cancellation by registered mail when he can do it personally, Your Honor? In other words, I am agreeable that the two requirements -- payment of cash surrender value and notice of cancellation be done also before the contract can be deemed cancelled, Your Honor. My only point is, if he can do it by personal service, why require him to do it by registered mail, Your Honor?

SENATOR MACEDA. So, Your Honor would just propose to insert the words "after registered mail," or personal service thereof"?

SENATOR SUMULONG. Upon payment of the cash surrender

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value to the vendee and after notice of cancellation has been served on the vendee.

SENATOR MACEDA. Personally or by registered mail?

SENATOR SUMULONG. It is understood, Your Honor. If he wants to send it by registered mail, he can do so. If he wants to send it personally, he can do it. In other words, he has to comply first with sending the notice of cancellation.

SENATOR MACEDA. Well, allow me at this juncture, Mr. President, to request the expert intercession of the distinguished gentleman from Pangasinan and Manila, who previously suggested that we adhere as closely as possible to the notice requirements of Article 1592.

SENATOR PADILLA. Mr. President.

THE PRESIDENT. The gentleman from Pangasinan and Manila.

SENATOR PADILLA. With the permission of the gentlemen --
Article 1592 of the Civil Code only mentions of notarial act.
It does not mention registered mail. So, the point of the
distinguished gentleman from Rizal, why specify "sent by
registered mail"? I believe we can eliminate those words "sent
by registered mail." And may I make another suggestion that
on this paragraph we put first the thirty days notice and then
afterwards, the full payment of the cash surrender value. It
is illogical to say "upon payment" and then "after thirty days."
First the notice of cancellation and then the payment.

SENATOR MACEDA. Well, as usual, Your Honor, we agree
to the very expert recommendation of my law professor. So,
I think that solves the problem. We will just eliminate the
words "sent by registered mail."

SENATOR SUMULONG. I am agreeable to that, Your Honor.

SENATOR MACEDA. Then rearrange the paragraph, Mr. President.

THE PRESIDENT. How will it read now?

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w/ Sen Padilla's
connections

SENATOR PADILLA. Mr. President, if I be allowed.

THE PRESIDENT. The gentleman from Pangasinan.

SENATOR PADILLA. On the proviso on page 2, line 24,

"Provided, that the actual cancellation of the contract shall take place after thirty days from receipt by the vendee of the notice of cancellation OR THE DEMAND FOR RESCISSION OF THE CONTRACT BY A NOTARIAL ACT AND UPON FULL PAYMENT OF THE CASH SURRENDER VALUE TO THE VENDEE."

THE PRESIDENT. That amendment is in lieu of the present wording. Is there any objection? (Silence.) There being none, the amendment is approved.

SENATOR MACEDA. Thank you very much, Mr. President.

Mr. President, after some discussion here, especially with the distinguished gentleman from Batangas and the distinguished lady from Tarlac and Pangasinan and Batangas, and with the explanation that even without this provision the pertinent provisions of the Civil Code already assure this particular protection to the vendee, we therefore propose to delete the paragraph which starts on line 7 and ends on line 9 of page 3.

"WHERE THE VENDEE HAS MADE IMPROVEMENTS ON THE PROPERTY, HE SHALL BE ENTITLED TO ALL THE RIGHTS OF A BUILDER IN GOOD FAITH."

SENATOR PADILLA. Mr. President.

THE PRESIDENT: The gentleman from Pangasinan.

SENATOR PADILLA. Mr. President, there appears in parenthesis "Sen. Padilla", but I agree to the proposed deletion.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the amendment is approved deleting that paragraph. Now, there will be need to do something on line 21 as a result of the previous amendment.

SENATOR MACEDA. Yes, Mr. President.

May we, therefore, readopt the very same wording.

THE PRESIDENT. The wording of the first amendment?

SENATOR MACEDA. Yes, Mr. President.

THE PRESIDENT. Is there any objection? (Silence.)

There being none, the amendment is approved.

SENATOR MACEDA. Now, may we go to page 4.

THE PRESIDENT. We are now on page 4.

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SENATOR SUMULONG. Mr. President.

THE PRESIDENT. The gentleman from Rizal, Senator Sumulong.

SENATOR SUMULONG. Mr. President, as a consequence of the amendment proposed by the distinguished gentleman from Pangasinan and Manila, I am also proposing on page 3, line 22, the deletion of the words "sent by registered mail." I think that is ^a logical consequence.

SENATOR MACEDA. Yes, Mr. President.

THE PRESIDENT. That was taken care of by the statement of the sponsor, that we adopt the wording of the first amendment.

SENATOR MACEDA. Exactly the same wording.

SENATOR ROXAS. Mr. President.

THE PRESIDENT. The gentleman from Capiz.

SENATOR ROXAS. Likewise, Mr. President, as a necessary consequence of the previous amendment on line 25 of page 3, that the line be amended to read in the same way as in the previous page, namely, "have the right to sell his rights or assign the same."

THE PRESIDENT. Is there any objection? (Silence.)

There being none, the amendment is approved. That is just to reproduce the wording of the first amendment of the gentleman from Capiz.

SENATOR MACEDA. Mr. President, we have, I believe, missed changing the paragraph numbers. So, if we can go back to page 1, we now change the original Section 2 on line 8 to read as "SEC. 3."

SENATOR TAMANO. Mr. President.

THE PRESIDENT. The gentleman from Lanao del Sur.

SENATOR TAMANO. Before we go to page 1, may I have the opportunity to propose an amendment to Section 5, appearing on page 4?

THE PRESIDENT. What is the amendment?

SENATOR TAMANO. Mr. President, Section 5 as presently written reads as follows:

"The vendee shall have the right to pay in advance any installment or the full unpaid balance of the purchase price any time without interest."

I propose, Mr. President, to remove the period (.) after the word "interest" and to add the following: "and to have such full payment of the purchase price annotated in the certificate of title covering the property."

(Senator Perez, presiding.)

Propose Senators Ilarde, Magsaysay, Aquino, Salonga, Kalaw, and Osmena.

THE PRESIDING OFFICER. Is there any objection? (Silence.)

There being none, the composition of the Committee on Ways and Means is hereby approved.

8 pt. of copy
10 pt. of file
BILL ON SECOND READING
S. No. 775 - PROTECTION FOR REAL ESTATE BUYERS
~~CONSIDERATION OF S.B. 775~~
(Continuation)

10 pt
SENATOR PADILLA. Mr. President.

THE PRESIDING OFFICER. The Acting Majority Floor Leader.

SENATOR PADILLA. I move that we resume consideration of Senate

Bill No. 775.

THE PRESIDING OFFICER. Resumption of the consideration of Senate Bill No. 775 is now in order. The sponsor of the measure, the gentleman from Laguna and Ilocos Sur, is recognized.

by VII-2 April 4, 1972 7:25 p.m.

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(Senator Perez, presiding.)

SENATOR MACEDA. Mr. President, we have distributed a second amendment by substitution as of today, April 4, 1972. I move that the same be considered as the basis of our deliberations this evening.

THE PRESIDING OFFICER. Is there any objection? (Silence.)

There being none, the second amendment by substitution of April 4, 1972 is the basis of further discussion on Senate Bill No. 775.

The following is the full text of the second amendment by substitution of Senate Bill No. 775:

Senate
Seventh Congress of the Republic)
of the Philippines :
Third Session)

S E N A T E
S. No. 775

(2nd Amendment by Substitution
as of April 4, 1972)

Introduced by Senators Maceda, Laurel,
Padilla, Tamano and Roy

8 #
AN ACT
TO PROVIDE PROTECTION TO BUYERS OF REAL ESTATE
PROPERTY ON INSTALLMENT PAYMENTS.

Be it enacted by the Senate and House of Representatives of
the Philippines in Congress assembled:

1 SECTION 1. This Act shall be known as the
2 "Realty Installment Buyer Protection Act".

3 SEC. 2. IT IS HEREBY DECLARED A PUBLIC POLICY
4 TO ENCOURAGE THE ACQUISITION OF REAL ESTATE FOR
5 HOUSING PURPOSES BY PROVIDING PROTECTION TO BUYERS
6 THEREOF ON INSTALLMENT PAYMENTS AGAINST ONEROUS
7 AND OPPRESSIVE CONDITIONS IMPOSED THEREIN. (Sen. Roy)

8 SEC. 2 3. In all transactions or contracts
9 involving the sale OR FINANCING of real estate
10 property on installment payments, INCLUDING RESIDENTIAL
11 CONDOMINIUM APARTMENTS BUT EXCLUDING [except]
12 commercial buildings AND SALES TO TENANTS COVERED
13 BY CODE OF AGRARIAN REFORMS, where the vendee has
14 paid at least two years of installments, the vendee
15 is entitled to the following rights in case he
16 defaults in the payment of succeeding installments: (Sen. Tamano &
Laurel)

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(a) To pay, without interest, the unpaid installments due within the total grace period earned by him, which is hereby fixed at the rate of one month grace period for every one year of installment payments made: Provided, That this right shall be exercised by the vendee only once in every five years of the life of the contract and its amendments, if any.

During the grace period and before actual cancellation of the contract, the vendee shall have the right to sell or assign his rights to another person or to reinstate the contract by updating the account.

(b) If the contract is cancelled despite the grace period granted in the preceding subsection, the vendor shall refund to the vendee the cash surrender value of the payments on the property equivalent to fifty per cent of the total payments made and, after five years of installments, an additional five percent every year but not to exceed forty per cent of the total payments made:

Provided, That the cash surrender value shall be refunded by the vendor to the vendee within ninety days after the actual cancellation of the contract:

Provided, Further, That the actual cancellation of the contract shall take place

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1 UPON THE FULL PAYMENT OF THE CASH SURRENDER VALUE
2 TO THE VENDEE AND after thirty days from receipt
3 by the vendee of the notice of cancellation OR THE
4 DEMAND FOR RESCISSION OF THE CONTRACT BY A NOTARIAL
5 ACT sent by registered mail. (Sen. Padilla and
6 Tamano)

7 WHERE THE VENDEE HAS MADE IMPROVEMENTS ON
8 THE PROPERTY, HE SHALL BE ENTITLED TO ALL THE
9 RIGHTS OF A BUILDER IN GOOD FAITH. (Sen. Padilla)

10 Downpayments, deposits or options on the
11 contract shall be included in the computation of
12 the total number of installment payments made.

13 SEC. 3 4. In case where less than two years
14 of installments were paid, the vendor shall give
15 the vendee a grace period of not less than sixty
16 days from the date the installment became due.
17 If the vendee fails to pay the installments due
18 at the expiration of the grace period, the vendor
19 may cancel the contract after thirty days from
20 receipt by the vendee of the notice of cancellation
21 OR THE DEMAND FOR RESCISSION OF THE CONTRACT BY
22 A NOTARIAL ACT sent by registered mail.

23 During the grace period and before actual
24 cancellation of the contract, the vendee shall
25 have the right to sell or assign his rights to another
26 person or to reinstate the contract by updating

8 M.

1 the account.

2 SEC. 47 5. The vendee shall have the right
3 to pay in advance any installment or the full
4 unpaid balance of the purchase price any time
5 without interest.

6 SEC. 57 6. If any provisions of this Act
7 is held invalid or unconstitutional, no other
8 provision shall be affected thereby.

9 SEC. 67 7. This Act shall take effect upon
10 its approval.

Approved,

(Senator Perez, presiding.)

SENATOR MACEDA. Mr. President, we have in this amendment by substitution, as well as in ready form, other improving amendments submitted by the distinguished members ^{who} ~~was~~ interpellated yesterday.

If there are no further interpellations, subject to the usual reservations for other members ^{ready} ~~who~~ like to propound further questions, we are ready to propose the committee amendments.

THE PRESIDING OFFICER. Is there any objection?

SENATOR RADILLA. Mr. President.

THE PRESIDING OFFICER. The Acting Majority Floor Leader.

by April 4, 1972 VII-2 725 pm

Sen. Perez presiding a

SENATOR PADILLA. Mr. President.

THE PRESIDING OFFICER. The Acting Majority Floor Leader.

SENATOR PADILLA. Will the distinguished author and sponsor yield to some questions?

THE PRESIDING OFFICER. He may do so if he pleases.

SENATOR MACEDA. Willingly, Mr. President.

SENATOR PADILLA. Why do we say "PROVIDE PROTECTION" and "This Act shall be known as the 'Realty Installment ^{Buyer} ~~Buyer~~ Protection Act'?" Why do we use the word "PROTECTION?" It might give the wrong ^{impression} ~~idea~~ that we are leaning towards the buyers as against the sellers. Why not say, "An Act to Regulate the Rights of Buyers of Real Estate ~~Property~~ on Installment Payment?" Something to that effect, instead of the awkward statement "PROTECTION."

SENATOR MACEDA. Well, Your Honor, the word was used advisedly because, as stated in the explanatory note of the original bill, this is a consumer protection measure. The word "PROTECTION" is used in the general context of consumer protection, especially in the light of what was brought up yesterday where it was admitted by all of those who graciously interpellated and expressed support for this bill that it would seem that at present the stereo type printed, prepared contracts are all tilted, so to speak, in favor of the vendor-owner. That is why it was thought that the principal purpose of this Act really is to provide some measure of protection to the

purchaser-vendee. But if the distinguished Acting Majority Floor Leader would propose some changes in this particular section then, of course, since it is just a title, we will have no strong feelings about it.

SENATOR PADILLA. But the proposed declaration of policy also uses the word "PROTECTION". This bill, although ~~passed~~ ^{introduced} as a special law, will really form part, by reference at least, of the various articles of the Civil Code.

SENATOR MACEDA. That will be the effect, Your Honor.

SENATOR PADILLA. There is only one new section I think on human relations in the Civil Code where protection is extended to ^{one of the parties} those who cannot adequately protect ^{himself or is at a disadvantage on account of his moral} themselves, but in reality purchase and sale the presumption is that the contracting parties can adequately, in accordance with the ^{rules on civil} ~~provisions of~~ law, protect themselves. So it might give a bad or a wrong impression if we ^{sh} would always stress the element of protection to real estate buyers, especially of ^{subdivision} lots, ~~on~~ ^{payable on} installment. I think we are only trying to safeguard fairly and adequately their rights under the contract. In other words, this bill does not want to continue the bad and, I believe, illegal practice of forfeiting all payments just because of one or two temporary defaults. I think that is the main idea and ^{the underlying} philosophy of this bill.

SENATOR MACEDA. That is the main idea, Your Honor.

SENATOR PADILLA. And, as I have stated in various occasions, that is 113

of the purchase, or other business, indifference, ignorance, mental weakness,

not only a good idea but also the philosophy underlying the Civil Code,
that there is really no material or substantial conflict, because the
civil law does not encourage automatic or unilateral cancellation or
rescision.
~~rescision.~~

~~SENATOR MACEDA: Yes, Your Honor. Even under~~

AS TRANSCRIBED:

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As I said, I do know that subdivision agents get their full payment during the first or second year. And I also know that prestigious subdivision owners who invest big sums of capital usually find it difficult for them to recoup even their initial capital within this two-year period that Your Honor is speaking of.

AS DELIVERED:

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I do know that agents get their full payment during the first or second year. And I do know that the major investment, which is big, that is, if you believe in the good subdivision owners, those who must put their capital in a big way before they declare it a subdivision or sell it as a subdivision, I do know that it is difficult for them to recoup even their initial capital.

~~Senator Padilla~~

does not encourage automatic or unilateral cancellation or
rescission.

SENATOR MACEDA. Yes, Your Honor. Even under a general principle in human relations, I think nobody should unjustly enrich himself at the expense of another.

SENATOR PADILLA. So I believe that this ^{bill} would have a more accurate impression and would substantially represent its idea and its purpose if we do not stress too much protection; more, the fair and equitable relationship between the seller and the buyer -- perhaps, the regulation of their mutual rights and obligations.

That is just a ^{suggestion} ~~thought~~, Your Honor. I will yield to the other ~~Members~~ of this Chamber.

SENATOR MACEDA. Thank you, Your Honor.

SENATOR KALAW. Mr. President.

THE PRESIDING OFFICER. The lady from Tarlac and Pangasinan.

SENATOR KALAW. Will the distinguished sponsor clarify ^{to} this humble representation [?] on a few points?

THE PRESIDING OFFICER. The gentleman may yield if he so desires.

SENATOR MACEDA. Willingly, Mr. President, to the lady from

Tarlac, ~~and~~ Pangasinan ~~and~~ ~~and~~ Batangas.

SENATOR KALAW. With the new policies now included in Section 2, I notice that on page 1, line 12, Your Honor did not include industrial lots. It only says here, "commercial buildings." Does not Your Honor think that we should include both industrial lots and buildings? Usually, if it is a commercial lot, they *construct* ~~put~~ there a commercial or industrial building. Would Your Honor be amenable to...

SENATOR MACEDA. We are amenable to excluding ^a industrial lots, Your Honor.

SENATOR KALAW. "Excluding ^a"?

SENATOR MACEDA. Yes, Your Honor.

SENATOR KALAW. Now, Your Honor, on lines 13 and 14, the following appears: "where the vendee has paid at least two years of installment."

I understand, Mr. President, that in the development of a subdivision, it is the first two years of installments ^{when} that the subdivision owner is burdened with ^{too much} ~~a lot of~~ expenses. Most of the expenses for the development are precisely being ~~tried to be~~ recouped during the first two years. The ^{sale} agents are usually paid in full on the first two years. Probably, this is not quite fair or favorable to the subdivision owner because ^{during} the first two years

~~is where~~ he practically makes his biggest investment. So, does not Your Honor think it fair if we make it three years ^{would be} instead of two years so that it will give the developer a year of breathing spell to continue the development of his subdivision? ^{of settlements}

SENATOR MACEDA. Well, Your Honor, when we conducted public hearings on this bill, this particular point was not questioned by any of the representatives of subdivision owners, including the Subdivision Operators Association of the Philippines, and the realtors. Precisely, the rationale behind the 50 per cent cash surrender value would be that the 50 per cent, which is not being refunded, let us say, for a contract that has gone a period of not more than five years, already takes care of the reasonable expenses of the seller or vendor. We have taken into consideration that particular item of the two-year period. Precisely, we are requiring a two-year qualifying period for this particular matter of grace period and other rights that are being given.

SENATOR KALAW. Yes, Your Honor, and I know that this bill is intended to protect the buyers.

SENATOR MACEDA. Yes, Your Honor.

SENATOR KALAW. But I think it should not be detrimental to the developers because we want also to develop areas ^{interest of the} in answer to the housing needs of our people.

May I know, Your Honor, if the Philippine Association of Real Estate Boards or PAREB has submitted its position paper on that particular requirement of two years? As I said, I do know that subdivision agents get their full payment during the first or second year. (And I also know that prestigious subdivision owners who invest big sums of capital usually find it difficult for them to recoup even their initial capital within this two-year period that Your Honor is speaking of. I also know that a two-year delay in their reselling is also detrimental to them. So, probably, ^{an} additional year would not be detrimental to the buyer ^{and to} ~~nor would it make it difficult on the part of the~~ developer.

SENATOR MACEDA. Well, during the public hearings I asked questions...

SENATOR KALAW. Has the Philippine Association of Real Estate Board submitted a position paper on this matter? This is an association of realtors — meaning, licensed real estate brokers. You know, the word "realtor" is a very much abused word. One can come in and present himself as a realtor although he may not be a licensed one.

SENATOR MACEDA. We can check that immediately, Your Honor.

(There was a pause.) I remember that Mr. Artemio Valencia appeared

in these hearings twice.

SENATOR KALAW. Yes. He is a member, if not president, of the PAREB.

SENATOR MACEDA. Who is the president of the PAREB, Your Honor?

SENATOR KALAW. I am not sure.

Did Mr. Valencia ^{make a} request to ^{submit this} ~~make a~~ stand, and have we received a position paper of the PAREB?

SENATOR MACEDA. Well, all of them, Your Honor, were allowed to submit their memoranda in amplification of whatever points they wanted to give. The last hearing was held on March 13, which was about three weeks ago, and the only one that really submitted a memorandum so far was the Subdivision Owners Association of the Philippines. And I got the impression after our second hearing that we had agreed, more or less, ^{on the amended version,} The bill received the unanimous acceptance, ^{already} especially when we reduced the two-month grace period for every year to one month. And then we also removed the automatic loan provision clause. The only point at issue was, they were asking for a 25 per cent refund. Well, of course, I was not surprised that they would in effect bargain for a lower rate.

SENATOR KALAW. May we be clarified on that point, Your Honor. In the meantime, we skip lines 13 and 14. May we be clarified on the provisions appearing on page 2. How do ^{these} ~~this~~ operate? Your Honor

says that the first down payment would be 50 per cent, and then it says here, "after five years of installments, an additional five per cent every year but not to exceed forty per cent of the total payments made." Does this mean 90 per cent in all?

SENATOR MACEDA. Yes, ^{your Honor} But that would already anticipate ^{thirteen} a ~~nine~~-year running of the contract. After ^{thirteen} nine years, he will be refunded 90 per cent of the original purchase price; and after ^{thirteen} nine years, the general rule is that if ^{one has} you have from 10 to 15 per cent appreciation every year, ^{or} you can imagine just how much that property is worth after ^{thirteen} nine years. Even if he has to refund 90 per cent, he would be getting back a piece of property that is already nine years old.

SENATOR KALAW. Yes. I do not ^{have objection to that,} ~~dispute that,~~ Your Honor, except that in my computation -- probably, we should compute this taking into consideration the 50 per cent plus the five per cent yearly but not exceeding 40 per cent -- it is possible that it is more than the total payments made.

SENATOR MACEDA. It could not be more, Your Honor.

SENATOR KALAW. I wish Your Honor would give me time to compute this. I am not ready to present an amendment until I shall have computed this ^{on the basis of} in a nine-year period. But I do know that even if we compute this ^{on the basis of} in a six-year period, the first year alone

SENATOR KALAW. ... how many years has he?

SENATOR MACEDA. Five years.

SENATOR KALAW. Five years, which is around P15,000, let us say.

If it is a 10-year contract.

SENATOR MACEDA. If it is a 10-year contract...

SENATOR KALAW. Yes, ^{again the same?} Just in round figures.

SENATOR MACEDA. ... presumably he has paid P15,000 in five years.

SENATOR KALAW. Yes, ^{your Honor.}

SENATOR MACEDA. He will only be refunded P7,500.

SENATOR KALAW. And ~~then afterwards~~, Your Honor, that is all that he will get.

SENATOR MACEDA. Yes, ^{your Honor.}

SENATOR KALAW. But supposing he has paid ^{already} for ¹³ nine years, as Your Honor said.

SENATOR MACEDA. Well, if he has paid ¹³ nine years and presumably he has paid P27,000, then he will be refunded ^{per cent} 90% of P27,000.

SENATOR KALAW. Meaning the total 90% ^{per cent}.

SENATOR MACEDA. Yes, ^{your Honor.}

SENATOR KALAW. I see, Your Honor.

SENATOR MACEDA. That is why it says an additional 5% ^{per cent}.

SENATOR KALAW. ~~Yes~~, I wanted a clarification on that because there might be an overlapping - because the other one is 50% ^{per cent} right away.

SENATOR MACEDA. Yes, ^{your Honor.}

will show
~~does~~ a big margin.

SENATOR MACEDA. May I explain this, Your Honor.

SENATOR KALAW. Please.

SENATOR MACEDA. We may not be in full agreement as to the premises. Well, the idea is, if the contract has been running for five years or less, then he is going to be refunded. If there is a cancellation, 50 per cent of all payments made will be refunded.

SENATOR KALAW. Let us say the lot costs ₱30,000. So, he would be refunded ₱15,000.

SENATOR MACEDA. No. He has not paid the full amount of ₱30,000.

SENATOR KALAW. Well, let us say he has paid for five years. So, that is around ₱15,000, that is, if the lot is payable in 10 years.

~~SENATOR MACEDA. Is it is a ten-year contract...~~

SENATOR KALAW. Now, in connection with the amendment forwarded by the distinguished acting Majority Floor Leader, it says here: "WHERE THE VENDEE HAS MADE IMPROVEMENTS ON THE PROPERTY, HE SHALL BE ENTITLED TO ALL THE RIGHTS OF A BUILDER IN GOOD FAITH." Now, in this particular case, we are referring to buyers who have failed to pay. ~~How~~, how can we consider them as builders in good faith when precisely they have failed to pay?

SENATOR MACEDA. Your Honor, that has reference to the provisions in the new Civil Code. As a matter of fact, the distinguished gentleman from Batangas has said - probably rightly so - that even without this particular provision, the general provisions of the Civil Code already assure this, but I consulted with the distinguished gentleman from Manila and Pangasinan by telephone this morning and decided to put this in for clarification. ^{One} He is a builder in good faith because it only means to say that when he builds that improvement it was with the knowledge and consent of the subdivision owner. And under standard contracts of installment sales once a person builds anything he has to get the permission of the subdivision owner.

SENATOR KALAW. Well, this may not be fair also to the subdivision ^{this} owner in ~~the~~ sense. Suppose the buyer builds a house and then afterwards he fails to pay on the fifth year, which is only half the way. Now, personally, I would not consider him a builder in good faith because he is not keeping up with the contract; he is not paying. Well, anyway,

Other economic reasons may ^{have intervened} ~~come in~~ and he is unable to pay. But that.

house is there and eventually the owner of the subdivision will have to

get back the house and lot and pay back the builder, and the obligation to

resell the house and lot will fall on the subdivision owner, ^{this obligation} which is

usually detrimental to the subdivision owner. ^{He} We cannot easily sell a

house and lot. Actually, the subdivision owner is not in housing business. ^{the}

^{His business is} ~~to be in~~ subdivision, that is, land selling, not house selling. If all

these people put up their house^s in their lot^s right away and then fail

to pay, the poor subdivision owner will have to sell ^{also} houses, too, which is

~~very difficult~~, Your Honor. It is difficult enough to sell a lot and it

is more difficult to sell a house, which was built ^{to suit} for one family, ~~and to~~

another family ^{who might have other ideas about a house.} ~~is buying it. The house may not answer the needs of the~~

~~family buying.~~ So, if it is the failure of the buyer to keep up with the

obligation

~~excuse~~ of paying for the lot, why should we leave the burden of

selling the house and lot now to the subdivision owner, [?] and not to the

~~buyer?~~ ^{should} We ~~must~~ probably provide that in the case of a house built on

^{unpaid} ~~lot~~, the buyer should take the responsibility of selling ^{his} the house

^{subdivision} before the owner pays for it.

SENATOR MACEDA. I think Your Honor's knowledgeable informant

will inform her as we were informed during the hearing that, really, the

percentage of defaults in the big subdivisions is less than ^{5%} 5%. And

that is why the big subdivisions really don't have any objection to this bill. As a matter of fact, even the Senate President who is, as a matter of public knowledge -- I don't think there is anything wrong in stating a matter of public knowledge -- operating, as we know, one of his companies the "Newtown"^{subdivision}, said that they discussed this and they feel that it does not really apply to them and that it really applies to the fly-by-night, the small, the unreasonable but rich subdivision owners, and not the poor subdivision owners. I have received, for example, notes like this from one of the technical assistants of the lady from La Union and Manila. She was saying, "Well, my son-in-law lost P4,000^{he} -- he paid that in installments to the San Antonio Valley III -- for just failing to make some installments."

Now, I think, ~~that the~~ subdivision owners are in a position to protect themselves. And in the hearings they are really agreed, especially those on the lower levels, that as a general rule once they have built a house on it they will try to retain that house and lot as much as they can, and that for them to lose 50 percent is really something that they ^{will} try to avoid. Now when it comes to the bigger subdivisions like Dasmaringas, San Lorenzo, Urdaneta and Forbes, ^{Park} then the hearings also brought out that there is really no problem in getting a buyer to take over. As a matter of fact, sometimes there is always a long line of people looking for a good investment opportunities in this ^{these} area?

SENATOR KALAW. That is precisely why, Your Honor, in the Dasmaringas level there is no problem because they can pay.

SENATOR MACEDA. Precisely, Your Honor. And not only that, Your Honor, ~~Not only can they pay,~~ but the few who default can easily dispose of their property.

SENATOR KALAW. ~~Because,~~ Your Honor, this is a group that can build good houses, and this is the group that commands a market that has wealthy buyers. So, ^{there} that is no problem.

SENATOR MACEDA. Yes, Your Honor.

SENATOR KALAW. That is precisely the reason why I am not trying to cover that. I am covering the regular, the ordinary subdivision owners, not the one in Dasmaringas nor the fly-by-night, ^{subdivision owners} I am referring

to a subdivision owner who also wants to make his own money on his land which he has subdivided. And I am not saying that we should work only in favor of the subdivision owner. I am also in favor of the bill. But I think ~~that~~ we should make a bill that is fair to both buyer and owner. And if we put this provision on lines 7, 8 and 9 which says that ^{proof 3, 1} "WHERE THE VENDOR HAS MADE IMPROVEMENTS ON THE PROPERTY, HE SHALL BE ENTITLED TO ALL THE RIGHTS OF A BUILDER IN GOOD FAITH" ^{Q 8 pt} what are those rights? The right of indemnity and the right of retention. And yet, this man has failed to pay. Granted that the contract is good, Your Honor. I am not saying that this contract is a cheating contract. I know ^{of} some contracts where they put provisions in small prints. We know that. And I suppose we can take care of that ^{in the Q} by law. But I am referring to a straightforward subdivision owner who also wants to develop his land with a fair rate of returns for his money. Now, why should we say that the buyer has ^{now} all the rights when he is the one who has failed to ^{keep} ~~come~~-up with the contract, and ^{still he is given} ~~give him~~ the right of indemnity and the right of retention under Article 448 of the new Civil Code? Why should we do this, Your Honor, to the detriment of one who owns the land and who is also sacrificing by waiting ^{to recover his investment through} ~~for this payment by~~ installment? He is not even getting the whole amount.

SENATOR MACEDA. I get Your Honor's point. But if ^{we} you will look at it from the other side, if he is only going to be refunded 50 percent of what he has paid for the land, and he has already spent so much also to build the house, I do not believe that Your Honor would also suggest, and neither would it be fair, that in refunding the 50 percent he loses the house altogether.

SENATOR KALAW. No, Your Honor. I am agreeable now to the 90 percent that Your Honor said. This is not detrimental to the owner. He is paid back.

SENATOR MACEDA. Yes, ^{Your Honor} On that 90 percent, if that is for ¹³ 9 years, --

SENATOR KALAW. Yes, ^{Your Honor} if it is new.

SENATOR MACEDA. What is Your Honor's suggestion now with regard to the house, for example?

SENATOR KALAW. If after two years he puts up a house, ~~precisely~~ precisely that is my worry, Your Honor.

SENATOR MACEDA. Yes, Your Honor.

~~SENATOR KALAW. Any man who wants to cheat will.~~

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SENATOR KALAW. ... ~~Precisely, that is my worry, Your Honor.~~

Any man, or any buyer who wants to cheat, probably, after two years of payment, will now build a house because he has all the rights of a builder in good faith. This is not fair to the subdivision owner. If I were ready to cheat, I will do it that way. And what is the counter effect? The owner of the subdivision will say: "All right, we will now put in the contract that unless you ^{have} are fully paid, you can not build a house." And what happens, Your Honor? We will again delay the ^{construction} development of homes and subdivisions in our country.

SENATOR MACEDA. If he has money enough to build a house, Your Honor, I don't think that he will risk a ⁵⁰ fifty per cent loss on his investment in the lot just to safeguard ... I don't think it will be a profitable business venture, ^{or} a cheating venture for him ...

SENATOR KALAW. All right, Your Honor. If I were to take advantage of the law, Your Honor, I would only pay ^{for} two years and build my house and take all my sweet time ⁱⁿ about paying it because I have all the rights under Article 447 ^{of the New Civil Code.}

SENATOR MACEDA. If ^{one has paid for} you only pay two years, Your Honor, then ^{he has} you have ^{only} only a grace period of two months or sixty days; and I don't really see how it would be profitable for anybody to build a house, spend so much to build a house, and then in the process also

intentionally loss one-half of his investment in the land.

Again, this question of indemnity, of course, will be subject to appraisal and will be subject to, of course, litigation should there be a question of indemnity. But I think, it would be a very, very rare exception that ^{we} you will find people going into house building just for purposes of, as Your Honor said, cheating the subdivision owner. It really goes against the usual ~~rule~~ ^{grain of} —

SENATOR KALAW. Yes, I realize this, Your Honor. I think that giving a man the right of a "builder in good faith" when, in short, he has ^u ran short of his contract is contrary and contradictory in itself.

SENATOR MACEDA. Well, what is Your Honor's proposal?

SENATOR KALAW. I ^{suggest} ~~propose~~, Your Honor, that we wait for the proposal, which I am willing to get for you from the PAREC, ^{if} ~~if it~~ ^{may} ~~we~~ take only one day, ^{but} I think we can make a wiser law. At least, we can be more secure with a feeling that the realtors who are ^{licensed} actually realtors — they are not-fly-by-night realtors — will give their opinion. And since I am not one myself, I am only thinking in terms of fairness ^{to} for both sides.

SENATOR LAUREL. Mr. President.

THE PRESIDING OFFICER. ^{The} Gentleman from Batangas.

SENATOR LAUREL. With the permission of the distinguished lady and the gentleman on the floor, I was going to suggest that, perhaps, as a compromise, why don't we define a "builder in good faith" in this provision? Perhaps, if we can agree on a definition of a "builder in good faith" that might satisfy the requirements of both.

SENATOR MACEDA. Maybe, we can request the assistance here of the distinguished gentleman from Manila and Pangasinan, my professor who had confirmed this particular amendment to me this morning, and maybe, we can — I could see the point of the ~~gentle~~ lady. Although I said ^{that} it would be very, very unlikely, yet it could happen.

The other point, though, ~~that~~ I was raising, precisely, which the distinguished gentleman from Batangas also pointed out to me, is that even if we remove the whole paragraph altogether the Civil Code will still apply.

SENATOR KALAW. Correct, ~~Precisely~~, Your Honor.

SENATOR MACEDA. And if Your Honor is suggesting that we re-
move this, I think ^{until} I have no objection, but Your Honor's particular fears will still not be fully ^{allayed} ~~covered~~ because he would still be ...

SENATOR LAUREL. Mr. President, my only fear is, if we leave

this provision here, it might ~~apply~~ ^{imply} that the definition of "good faith" here is different from the definition of "good faith" in Civil Code. By deleting this provision, it will automatically mean that the definition of "good faith" in the Civil Code will prevail ~~or apply~~,
Unless we define "good faith" here as defined in the Civil Code.

SENATOR MACEDA. Yes, ^{your Honor,} as defined in the Civil Code.

SENATOR LAUREL. That is just a suggestion.

SENATOR KALAW. Thank you, Your Honor. Anyway, I think the law will apply. Article 448 of the new Civil Code, Your Honor, will apply anyway even if we don't mention this.

SENATOR MACEDA. With that understanding on the record, Your Honor, I would be willing to delete this. As Your Honor noticed, this was ...

SENATOR KALAW. Yes. Thank you, Your Honor. I am only thinking of two ^{sides} ~~sides~~, I am not thinking on one side ~~alone~~.

SENATOR MACEDA.. Yes, *your Honor*.

SENATOR KALAW. On the same page, Your Honor, ^{regarding} after the word "registered mail," ^{to show} there are many experiences, in fact, that when a registered mail ^{is sent} ~~goes~~ to a buyer who can not meet the date of payment, usually, the buyer does not get his registered mail, Your Honor, or refuses to ... Well, actually, he is not interested in getting his registered mail. ^{It} Probably, we should insert an amendment that says that if the addressee has been sent three times notice by registered mail and he does not react to it, it shall be construed as final, that is, it is supposed to be understood that he has received it. ~~Because,~~ Your Honor, usually, when one gets a registered mail, let us say, from his subdivision owner and he can not pay yet, ~~usually~~ he will not get it just to show that he hasn't received the mail. Sometimes, the subdivision owner sends the registered mail but they ^{buyers} evade receiving

the mail. So, the poor subdivision owner can keep on sending

registered mails ~~when~~ ^{but} they don't come to pay. There is no protec-

tion. Probably, we ~~can~~ ^{should} insert ^{a proviso} ~~an amendment that should say~~ ^{to provide} that after

~~one has been sent~~ ^{has already been sent} three registered mails and they don't react, then that should be

considered as the final notice that they have been duly notified.

What do you think, Your Honor? ^{of it}

SENATOR MACEDA. Usually, Your Honor, once ~~there is no delivery,~~ ^{mail is not delivered,}

there is a reason given when the mail is returned to the sender.

after three notices, ~~actually you receive~~ three notices, ^{are sent.}

SENATOR KALAW. Yes, ^{your Honor}

SENATOR MACEDA. Now, I was wondering whether we might not be

establishing a precedent here, which is really new in all established

legal procedure in this country where registered mail is sufficiently

required only once, as a matter of fact. Now, to require three times

and after that consider that as constructive receipt ...

SENATOR KALAW. Yes, ^{your Honor}

SENATOR MACEDA. ... my legal instincts, offhand, would not seem

to find it easy to accept. Maybe we could say, after one registered

mail ^{has been} ~~is~~ sent and it is returned to sender for one reason or another,

and he goes out and makes personal delivery to the purchaser ^{at} in the

particular house or real estate or property under question. ^{at} Sometimes

like that.

'SENATOR KALAW. Whatever is your solution, Your Honor. But what I am considering is this. ^{That} ~~That~~ It is most likely, the person who can not pay might be evading it. Now, in this sense, the subdivision owner is doing his ^{role of} ~~role of~~ sending all those registered mail, and so forth but here is one who is trying to evade it and we can't seem to correct a purposeful negation of the registered mail. I think Your Honor can think of something that should, more or less, also consider the buyer who is ^{receiving} ~~avoiding~~ the registered mail, which is sent to him, as having received the mail. I will be willing to propose amendments along that line, Your Honor, if you don't mind.

Your Honor, I have a few more ^{questions} ~~to~~ ask. ~~So far,~~ Your Honor, my last question would be on ~~this case & date~~ page 4, line 5.

Don't you think, Your Honor, that in this particular case, the vendee shall have the right to pay in advance ^{any} ~~and in~~ installment ~~for~~ the full unpaid balance of the purchase price anytime without interest?

~~SENATOR KALAW~~

~~which have the right to pay in advance and in installment for the full unpaid balance of the purchase price anytime without interest.~~

SENATOR MACEDA. Your Honor, if I may clarify, the phrase "without interest" applies only to the latter portion. That was really the intention, the advance payment of installment.

SENATOR KALAW. Without ^{the} agreement of both parties, Your Honor?

SENATOR MACEDA. Precisely, Your Honor, we included this upon suggestion of the representatives of the general public and buyers because under existing contracts, surprisingly, a lot of contracts that does not give the right, actually prohibit. As a matter of fact, it does not allow the buyer to pay in advance even if he already ^{has} some money and it does not seem right again, Your Honor, that if somebody has probably some money and wants to pay in advance then ...

SENATOR KALAW. There should be no prejudice.

SENATOR MACEDA. Yes, *Your Honor*.

SENATOR KALAW. But there is no need ^{therefore} ~~therefore~~, Your Honor, to include this in the contract.

SENATOR MACEDA. No need, Your Honor, ^{once} when the ^{bill} ~~bill~~ is passed, then automatically these provisions apply.

SENATOR KALAW. Even if in the original contract there is no such thing? I mean, if this ^{bill} is passed, Your Honor, it shall not prejudice any previous agreement ^{made} between parties in the original contract, in ^{prior} ~~past~~ contracts that they have?

SENATOR MACEDA. Well, as suggested by the distinguished gentlemen from Lanao, Batangas, Manila and Pangasinan, ~~the~~ As a matter of fact, there is a list of amendments submitted here by the distinguished gentleman from Batangas making it clear that all existing contracts shall be subject to the provisions hereof.

SENATOR KALAW. Yes, that is all I want to know Your Honor. But I hope Your Honor will give us time to get the opinion of the Real Estate Board. Actually, ^{some} ~~the~~ members of the Philippine Association of the Real Estate Board suggested the amendments that I brought up to the floor this afternoon, ~~to your attention~~. So, probably, I should just ask for ^{some short} ~~a~~ little statements from them and it is up ^{to} ~~for~~ Your Honor, ~~of course~~, to consider whether their proposals are acceptable or not.

SENATOR MACEDA. Well, for your information, Your Honor, as I said, Mr. Valencia attended; Mr. Dante Zarraga, who is also a realtor, was there.

Your Honor
SENATOR KALAW. Yes, I know all of them.

SENATOR MACEDA. *Atty. Barcelon of Ayala, Mr. Vicente Soliven,* who is also a realtor *were present.* ~~As you know,~~ I do not know if they are officers of the PAREB but they are members of different boards that *the* are members of ...

SENATOR KALAW. ... the Philippine Association of Real Estate Board.

Your Honor
SENATOR MACEDA. Yes, Well, Mr. Balatbat ~~is~~ of course used to be an officer, I think. I do not know ~~what~~ is his position now; Mr. Lagniton -- all of these people ...

SENATOR KALAW. They are all licensed realtors.

SENATOR MACEDA. More or less, they are the leaders of the real estate industry.

SENATOR KALAW. They are all licensed realtors and leaders, yes. But maybe the Philippine Association of Real Estate Board as ~~an~~ ~~an~~ association should ~~just~~ make a stand, ~~Your Honor,~~ and ask that these provisions, which I questioned today, *can be* ~~to make them~~ *be* clarified.

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if they are
~~whether this is~~ not prejudicial *to the interest of* ~~of course~~ to the license.

subdivision owners. Thank you very much, Your Honor. ~~Just, maybe,~~

~~tomorrow morning or tomorrow afternoon,~~ Thank you.

SENATOR MACEDA. Thank you.

SUSPENSION OF CONSIDERATION ~~OF S. NO. 775~~

SENATOR PADILLA. Mr. President.

THE PRESIDING OFFICER. The Acting Majority Floor Leader.

SENATOR PADILLA. I move that we suspend consideration of Senate Bill No. 775.

THE PRESIDING OFFICER. Is there any objection? (Silence.)

There being none, consideration of Senate Bill No. 775 is suspended.

ADJOURNMENT OF THE SESSION

SENATOR PADILLA. Mr. President, in view of the advanced hour, I move to adjourn ^{the session} until 5:00 o'clock tomorrow afternoon.

THE PRESIDING OFFICER. Is there any objection? (Silence.)

There being none, the session is adjourned until tomorrow afternoon at 5:00 o'clock.

It was 8:10 P.M.

~~SENATOR PADILLA. The term for both parties.~~

Even if the debtor is given time to pay, or the transaction is payable on installments, the presumption is that the term is not only for the benefit of the obligor, but ^{based on} ~~it is~~ the agreement of the parties, ^{of the period} it is for their mutual benefit.

Now, if the agreement is a sale on installment, why ^{the law} must we amend the contract by giving the buyer the right to pay the balance in advance? That ^{would be} is a modification of the contract. Now, of course, if the vendor agrees and the buyer agrees, well and good. But suppose the vendor has certain maturity dates and ^{he has} certain obligations and ^{on definite dates} also assets coming, he may not want to get the full ^{payment in advance} payment. Maybe, his tax bracket will go up. On the other hand, he wants the purchase price to earn interest. Now, this provision, if allowed, may be assailed as impairing the obligations of contract.

SENATOR MACEDA. Mr. President, this is one of the main features of this bill which came about specifically, after suggestions from the public, and reiterated many times in the public hearings, that under present standard printed contracts, it gives the vendor the right to refuse accept-

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ance of advance payments as already adverted to. And the vendee, or the public, cannot understand why, because if they have already the money to pay, why they should not be allowed to pay in full the balance of the installments.

And I feel that it would ^{be} advantageous generally to both the vendor and the vendee, specifically the vendor, if the vendee is allowed anytime he wants to fully pay the purchase price. After all, the vendor can reinvest the

and same ~~at~~ that is the reason why he does not necessarily lose ^{any} the interest, because after ^{having received the full payment,} getting the same he can invest the same on time deposits ^{and for} for example, over the same period ^{and he} he will probably get the same interest that he is charging.

SENATOR PADILLA. Well, what Your Honor said may be true, but in ^{the} your ^{hearings} ^{which were} (Your Honor) mentioned, I cannot understand why this right should not be granted to the

buyer. Well, I have given the reason. Under the Civil Code a period is not only for one party. It ^{has been} is agreed ^{and it is intended} for both parties. Of course, they can change ^{it} that by mutual consent,

but not by giving one party alone the right as against the other will of the/contracting party. Here, we will be legislating in lieu of ^{or to modify} the agreement of the parties.

SENATOR MACEDA. Well, Your Honor, it is true that usually, this is upon agreement of the parties, except that, as we said again in practice, what happens is that there is no actual understanding of this particular provision. What happens is that in the majority of cases, they just sign these printed contracts without the vendee really knowing all the provisions of this contract.

Well, of course, legally we say that that is his fault, but the realities of the situation are such that they just really sign these printed contracts. And we do feel that the vendors will not be prejudiced by this provision--giving due respect to the opinion of the gentleman from Pangasinan -- but at the same time it would, of course, be to the advantage of the vendee if at a particular time when he happened to have gotten some money, or had a good harvest, or hit the sweepstakes ^{AD} ~~he gets the money and~~ he wants to pay in advance. It does not seem right, if he wants to pay already the entire obligation, ~~that there could be~~ ^{but there is} a provision in the contract which says that the vendor can refuse.

SENATOR PADILLA. Your Honor, in a subdivision installment payment, it may be stipulated for 15 years, not or even 20 years. Now, suppose the vendor has faith in the economic capacity of this Republic and he feels that in five years ^{may be} there is inflation but after five years the prices will stabilize, our currency will stabilize ^{not deteriorate, then} it is to his interest not to accept payments on inflated money now for an obligation that will mature 10, ^{or} 15 years hence.

Another consideration: that ^{or} vendor might have agreed ^{on} to a subdivision for a period of 15 years. So, he has calculated that the income coming from the installment payments every year will place him

in the income bracket of so much percentage. ^{But if} Now, all of them will ^{buyers} pay ^{within} in one year. ^{Why} this income tax bracket might rise! That ^{would be} is to his prejudice. ^{and the buyer would} In other words, if they think the advanced payment is mutually beneficial to both, well, they can easily agree.

And I agree with Your Honor that at the present time it is better for the vendor to receive the cash, because the interest payments are high. That installment payment in the subdivision sale of lot ^{maybe} only draw six per cent, eight per cent, ^{or} ten per cent. If he has the money at the present time, he can probably have 14 per cent ^{or} 16 per cent. Now, that may be to his advantage now. So, if it is mutually advantageous, well and good. But suppose the vendor has other plans, why must we legislate and give the buyer a right that may prejudice the seller? That is the point.

And the other legal point here, Your Honor, is that this particular section might be declared invalid as impairing the obligations of contracts.

SENATOR MACEDA. Well, on the question of inflation, Your Honor, I would be willing to accept an exclusion in cases of extraordinary inflation as is provided for in a general provision of the Civil Code. That would take care of that particular case.

~~I could see the~~

SENATOR PADILLA. Now, Your Honor, Article 1250 of the Civil Code ^{which} does not only refer to extraordinary inflation or deflation, ^{it} only gives ^{provides} as a basis for payment of the value of the currency at the time the obligation was constituted.

SENATOR MACEDA. Yes, Your Honor.

SENATOR PADILLA. That ^{article 1250} will have no application.

SENATOR MACEDA. Precisely, what I am suggesting is that we can adopt that principle there and say that in cases of extraordinary inflation this provision does not apply. That would solve at least one-half of your difficulty, Your Honor.

THE PRESIDENT. What is now the outcome of the dialogue? (Laughter.)

Senator Maceda

... I think this is of the very heart of the bill too, Your Honor. If we remove this, we remove one-third of the bill and the distinguished gentle lady from Laguna and Cavite has already pointed out the fact that there are so many other problems which are not yet covered by this particular bill.

SENATOR PADILLA. Your Honor, the meat of the bill is to prevent the unreasonable cancellation or rescission of a contract of sale or to sell of real property on installment by the vendors availing themselves of a stipulation that failure to pay the installment will give rise to automatic or unilateral cancellation. That is the substance of this bill, to which, I have expressed my full conformity. However, the title says, "to give protection to buyers," although I object in a previous interpellation to that phrase "protection to buyers." But this section does not only give protection. It gives a new right by law when this is essentially contractual.

SENATOR MACEDA. Well, supposing we put an additional proviso to the effect that ^{the} vendor shall have the right to pay in advance any installment ^{or} the full and unpaid balance of the purchase price any time without interest, unless he waives the same in writing. Would that be acceptable to the distinguished gentleman from Pangasinan and Manila that we give him the right but we also give him the right to contract otherwise.

SENATOR PADILLA. The proviso on waiver will not satisfy the points of view that I have expressed. And that proviso will in any way be meaningless. Because, as Your Honor said, when you have a right, you have the right to waive it. So, if Your Honor puts it in the section, "provided he can waive it," it does not add anything. This is the point of view of the buyer. Now, I am against the automatic cancellation by the seller, but I am not in favor of giving additional right to the buyer at the expense of the seller.

SENATOR TAMANO. Mr. President.

THE PRESIDENT. The gentleman from Iloilo del Sur.

SENATOR TAMANO. In this regard, Mr. President, may I point out that although additional rights are conferred upon the buyer, precisely what we are trying to do here is to equalize the position of a giant and a Lilliputian. The subdivision owners usually are large corporations and, as has been pointed out, they have already printed forms which, in the nature of things, a buyer usually is forced to sign otherwise he is not allowed to buy the property.

So, ^{for} in the public interest, I submit, Your Honor, that the fears that are expressed by the distinguished gentlemen from Pangasinan and Manila, while valid, can also be refuted by the fact that the money which the subdivision owner may refuse to accept because it will increase his tax liability could be deposited in the bank in trust and the bank will be the one to make the monthly installment, that is, if what the distinguished gentlemen from Pangasinan and Manila seeks to avoid is the sudden accumulation of cash that the subdivision owner would have.

So, considering the intent and ^{the} purposes of this bill, which is to provide protection for the small buyers, for the persons who usually have no other alternative but to buy from the subdivision owner, and in line with the policy to promote and encourage the ownership of homes by the lower and middle class, I believe this provision could be justified.

SUSPENSION OF THE SESSION

THE PRESIDENT. With the permission of the Chamber, the session is suspended for a few minutes.

It was 6:26 P.M.

RESUMPTION OF THE SESSION

At 6:28 p.m. the session was resumed with the President of the Senate, Hon. Gil J. Puyat, presiding.

THE PRESIDENT. The session is resumed. The sponsor has the floor.

SENATOR MACEDA. Mr. President, may I request the distinguished gentleman from Iloilo del Sur to restate his proposed amendment?

SENATOR TAMANO. Very gladly, Mr. President. The proposed amendment that I would like to introduce is to eliminate the period (.) after the word "interest" on line 5, page 4, and to add the following so that the entire sentence shall read as follows:

"The vendee shall have the right to pay in advance any installment or the full unpaid balance of the purchase price any time without interest AND TO HAVE SUCH FULL PAYMENT OF THE PURCHASE PRICE ANNOTATED IN THE CERTIFICATE OF TITLE COVERING THE PROPERTY."

THE PRESIDENT. What does the sponsor say?

SENATOR MACEDA. I have no objection, Mr. President.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the amendment is approved.

SENATOR TAMANO. Now, Mr. President, I also propose the following amendment. 155

First, I would explain what my amendment is.

Usually the subdivision owners have development plans. I learned about this, Mr. President, in ^{the} conversation with some developers. I was made to understand that developers have subdivision plans denominated as Phase I, Phase II, Phase III and Phase IV. These Phase I, Phase II, Phase III and Phase IV are denominated as such because Phase I will first be developed and after Phase I has been developed, Phase II will be developed and so on with Phase III and Phase IV.

Now, Mr. President, under the scheme of developers, a person is given the option to purchase lots under ^{any} of these phases in such a way that if you buy a lot in Phase III, the lot in ~~Phase III~~.

~~Section 5(b)(2)~~

~~(...in such a way that if one buys a lot in Phase III, the lot in~~

~~Phase III would be cheaper than the lots in Phase I which is already~~

developed or has all the amenities that are required of a subdivision;

that Phase III, for instance, is proposed to be developed at a certain

period of time; say, after a period of five years, Phase III is going

~~to be developed~~, and therefore, the price of the lots in Phase III is

much cheaper.

Now, these developers in advertising their subdivisions would make out such a claim that we buy in Phase I which is already developed; Phase II will be developed, say, in 1975; and, Phase III will be developed in 1980. It so happens, Mr. President, that some of the poor buyers of lots find out later on that developers do not proceed in accordance with their developments as they have advertised, and that such representations which may have been the basis of the purchase are not carried out.

Therefore, Mr. President, I propose an additional paragraph to cover this contingency. And I shall read, with Your Honor's permission, the following, as the second paragraph in Section 5:

"THE VENDEE SHALL ALSO HAVE THE RIGHT TO SUSPEND PAYMENTS OF THE INSTALLMENTS OR RESCIND THE CONTRACT OR TRANSACTION UPON HIS ELECTION FOR FAILURE OF THE VENDOR TO COMPLY WITH HIS WARRANTIES OR REPRESENTATIONS UNDER THE CONTRACT WITHIN A REASONABLE LENGTH OF TIME: PROVIDED, THAT THE ACTUAL SUSPENSION SHALL TAKE PLACE THIRTY DAYS FROM ACTUAL RECEIPT BY THE VENDOR OR HIS DULY AUTHORIZED REPRESENTATIVE OF DUE NOTICE TO SUSPEND PAYMENT OF INSTALLMENTS SENT EITHER BY PERSONAL DELIVERY OR REGISTERED MAIL: PROVIDED, HOWEVER, THAT UPON RECEIPT OF THE NOTICE OR COMPLIANCE SENT BY THE VENDOR BY PERSONAL DELIVERY OR REGISTERED MAIL, THE VENDEE SHALL IMMEDIATELY RESUME PAYMENT OF THE INSTALLMENTS, BUT THE PERIOD OF SUSPENSION SHALL BE DEDUCTED FROM THE LIFE OF THE CONTRACT."

Then a third paragraph:

"IN THE EVENT THAT THE VENDEE SHALL ELECT TO RESCIND THE CONTRACT, THEIR RIGHTS AND OBLIGATIONS SHALL BE GOVERNED BY THE APPLICABLE PROVISIONS OF THE CIVIL CODE OF THE PHILIPPINES."

SENATOR MACEDA. Mr. President, this is the very same point raised by the lady senator from Cavite and Laguna. I agree with it wholeheartedly. However, much as I would like to accept the amendment of my distinguished colleague from Lanao del Sur, may I reiterate my suggestion that, maybe, the distinguished senator from Lanao del Sur and the lady senator from Laguna and Cavite can make this the subject of a separate measure which I would be happy to co-author if they would so desire.

SENATOR TAMANO. May I inquire, Mr. President, if there is any

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fundamental reason or principle on which the distinguished sponsor anchors his unwillingness to accept this amendment?

SENATOR MACEDA. Well, I have no fundamental reason, Your Honor. I can leave it to the Chamber.

SUSPENSION OF THE SESSION

May I ask for a one-minute suspension, Mr. President.

THE PRESIDENT. The session is suspended for one minute.

It was 6:35 p. m.

RESUMPTION OF THE SESSION

At 6:45 p.m., the session was resumed with the President of the Senate, Hon. Gil J. Puyat, presiding.

THE PRESIDENT. The session is resumed.

SENATOR TOLENTINO. Mr. President.

THE PRESIDENT. The Majority Floor Leader.

SUSPENSION OF CONSIDERATION ~~OF SENATE BILL NO. 775~~

SENATOR TOLENTINO. With the permission of the distinguished gentlemen on the floor, and to take advantage of the presence of several members of the Senate now in the Hall, I move that we suspend consideration of Senate Bill No. 775 for a few minutes so that we can vote on third reading on House Bill No. 4052, the Con-Con fund bill.

THE PRESIDENT. Is there any objection? (Silence.) There being none, consideration of Senate Bill No. 775 is suspended for a few minutes.

6.8.74
VOTING
BILL ON THIRD READING
H. NO. 4052 - CON-CON ADDITIONAL FUND

SENATOR TOLENTINO. Mr. President, I move that we vote on third reading on ~~Senate~~ House Bill No. 4052. ~~On this bill, we have already voted on April 5, 1972.~~

THE PRESIDENT. ~~SENATOR TOLENTINO. SENATOR TOLENTINO.~~ Voting on third reading on ~~Senate~~ House Bill No. 4052 is now in order. The Secretary will please read the title of the bill only, if there is no objection. (There was none.)

THE SECRETARY:

"AN ACT APPROPRIATING THE ADDITIONAL SUM OF TEN MILLION PESOS TO DEFRAY THE EXPENSES OF THE 1971 CONSTITUTIONAL CONVENTION."

THE PRESIDENT. ~~SENATOR TOLENTINO. SENATOR TOLENTINO.~~ The Senate will now proceed to vote on the bill. The Secretary will please call the roll.

The Secretary called the roll and the result of the voting was as follows:

YES - 13

Sen. A. Alvarado	Sen. L.B. Perez
" M.W. Antoline	" G.M. Roxas
" H.Z. Benitez	" J.J. Rey
" E. Estrada-Kalaw	" L. Sumulong
" R.V. Mitra	" M. Tamaso
" A. Padilla	S. A.M. Tolentino (x)
	THE PRESIDENT

NO - 0

ABSTENTION - 1

Sen. E.M. Maeda (x)

THE PRESIDENT. ~~SENATOR TOLENTINO. SENATOR TOLENTINO.~~ With thirteen affirmative votes, no negative vote and one abstention, ~~Senate~~ House Bill No. 4052 is approved on third reading.

* With explanation of vote.

SENATOR MACEDA. Mr. President.

THE PRESIDENT. The gentleman from Ilocos Sur and Laguna.

SENATOR MACEDA. May I explain my vote on this measure, Mr. President.

THE PRESIDENT. The gentleman may proceed.

MACEDA EXPLANATION OF VOTE

SENATOR MACEDA. As I have indicated in the course of the debate on this measure, I have certain reservations about this additional deficiency appropriation. But in view of what I felt was the consensus in the Senate of not opening this body to unwarranted and unfounded charges ^{of} in ~~our~~ trying to restrict or in any way make it difficult for the Convention to finish its work, I stated beforehand that I would abstain from further interpellations and would also abstain in the final voting. ^{and} Mr. President, I believe that I have adhered to this view in spite of my interpellations yesterday -- ~~but~~ which was brought about by a letter of the President of the Constitutional Convention -- by, for example, no longer speaking in opposition to the measure which could have been my privilege and right to do.

Mr. President, I feel that with the presence of some of my friends here from the Constitutional Convention, I must explain that I was just trying to reflect the sentiment in asking the

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questions which, I felt, many of our citizens were asking. And if in the process I might have contributed to calling the appropriate attention of the Constitutional Convention and, probably, in calling their attention to some of the questions, feelings and hesitations that the members of the Senate are now so asking and so feeling -- and I hope that this is reflected in the welcome spurt of activity that was brought about the other night when, suddenly, two articles were approved by the Constitutional Convention, and that last night.

~~SENATOR HASKIN~~ and that last night another article was almost approved. Then maybe, Mr. President, I have contributed to impressing the members of the Constitutional Convention, not ~~scrutinize~~ that ^{we} don't want them to finish their work but precisely that we were reflecting the public mood and sentiment that the sooner they finish their work the better for everyone concerned.

Yesterday, Mr. President, I felt that in view of the so many revisions and estimates, I had to ask certain questions again. And in answer to the letter of the Con-Con President who was asking why we are now asking questions ^{I would like to reiterate} we are asking questions, Mr. President, because this is already a deficiency appropriation. We are asking questions because ^{in spite of} three representations that the previous appropriations were sufficient ^{have} turned out to be, in the words of the experts who were sent here, "miscalculations", Mr. President, and so we just wanted to make sure that ^{the} representations this time were no longer open to "miscalculations" and we were just trying sincerely to discharge our sworn duty under the Constitution to deliberate and to scrutinize every proposal that comes before this August Body.

I was accommodated by the distinguished sponsor and Majority Floor Leader with a reduction of the miscellaneous and sundry expenses by \$500,000, although I have proposed an amendment to the tune of

\$1,900,000 seeking to cut \$600,000 from personal services and seeking to cut several hundred thousands from supplies and materials, transportation and other items. I said yesterday, Mr. President, that with the nonapproval of the amendments that I had presented except the \$500,000 for sundry expenses, I might be constrained to vote against the measure.

But, Mr. President, in the meantime I have been assured by some of my friends in the Convention that while probably in the past some of them did not take measures to see how the funds were being expended, this time they are going to take ^a closer lock and watch on how funds of the Constitutional Convention will be spent in the future. And because of this, Mr. President, I shall no longer cast a negative vote, but pursuant to my original stand, and in line with the desire of this Body to now expedite action on this bill, I am abstaining from this particular vote, Mr. President. Thank you.

SENATOR TOLENTINO. Mr. President.

THE SENATE PRESIDENT. The Majority Floor Leader.

SENATOR TOLENTINO. Mr. President, before the vote is announced, may I be permitted to say a few words in connection with my vote?

THE SENATE PRESIDENT. The gentleman may proceed.

TOLENTINO EXPLANATION OF VOTE

SENATOR TOLENTINO. Mr. President, the major amendments in this bill to the version approved by the House of Representatives were introduced by your humble colleague: ^{BY} the itemization and the provision with respect to the oath of office. With respect to the itemization, Mr. President, we would like to put on record that altho in the past we have given practically a blank check to the President of the Convention by lump sum appropriations, this attitude of now making an itemization has been impelled not by just a desire to make an itemization, but by the fact that contrary to assurances made by the distinguished President of the Convention to us when we approved the last Appropriation Bill, expenses of the Convention went beyond the amount that he assured us was necessary.

When he came to us when we were discussing the general appropriation bill for the current year, where there was an item of \$5 million for the Constitutional Convention, he asked that we include or increase the amount by \$7 million. My first answer to him was that it could not be done because since the proposal of the President in the budget was

only \$5 million, we had no power to increase the appropriation by \$7 million more. And so, in order to accommodate the request of the President of the Convention, we found some ways or means of providing for \$7 million more; and that was done through the provisions on savings.

The \$7 million was expressly requested to complete the appropriation for the Convention at \$24 million. The Convention was supposed to work for 12 months; and therefore, he said, since the Convention expenses amount to \$2 million per month, \$24 million was required for the 12-month period. And so, ^{we} he gave a total of \$24 million.

But we learned that by February, there was no more money available out of the funds that had been appropriated. And we ^{also} learned that the expenses had gone beyond what was given to us as an estimate by the distinguished President of the Convention.

There were other matters which had been brought to our attention that would seem to indicate juggling of funds in the Convention. And, therefore, ^{it} ~~there~~ was thought -- I believe it was necessary and my colleagues in this Chamber agree -- that we should make a general itemization. And these figures, Mr. President, as they originally appeared, were not our figures. They were figures furnished to us by the representatives of the Convention who were here during the deliberations on this phase of the bill. During the period of amendments,

there was a reduction of half-a-million pesos in miscellaneous sundry expenses because this is practically a discretionary fund of the President of the Convention, and members of this Chamber thought that ₱192,800 would be sufficient for 3-1/2 months. But over and above that, the total appropriation now of ₱9.5 million is ^{really} still in excess of the amount needed at the rate of ₱2.7 million a month for 3-1/2 months. For 3-1/2 months the amount that would be needed, at an average expense of ₱2.7 million a month, would be ₱9.45 million. Now we have ₱9.5 million, so it is still in excess of what is estimated to be needed by the Convention.

So, this will not in any manner affect the workings of the Convention. The distinguished President of the Convention insinuated that we would be impairing the independence of the Convention with this itemization. This is not going to impair in any manner the independence of the Convention. This may impair the independence of the President of the Convention in the disposition of these funds, but certainly not the independence of the Convention. This Senate, I am sure, will never do anything ~~that will~~

~~Senator Tolson~~

~~anything~~ that will affect or influence the Convention or impair its independence. In fact, we have made statements here that we do not want to place a deadline on the workings of the Convention because we believe that would impair its independence and we stand on that. If there is going to be an impairment of the independence of the Convention, it will not come from the Senate. It is not the Senate that would seek to impair the independence of the Convention or influence its proceedings.

Now, Mr. President, I would like to say something about the amendment which your humble colleague submitted which would, in effect, require an amendment of the oath of office of many delegates to the Convention, which is, that we now require that there be an oath to support and defend the Constitution as required by Article XIV, Section 2, of the present Constitution. This provision of the present Constitution reads:

"All public officers and members of the armed forces shall take an oath to support and defend the Constitution."

This is mandatory.

Now, Mr. President, there are many delegates to the Convention who do not have in their oath^{of} office the usual phrase "to support and defend the Constitution of the Philippines." This has been because there is a thinking, which I concede has ^{certain} ground, that

because the Convention has been called to amend or revise the Constitution, it would be inconsistent with their function if they should take an oath to support and defend the Constitution. I think, Mr. President, this is a wrong view of the situation.

In the first place, the Convention itself exist by virtue of ^{the} Constitution. The Congress, in joint session, approved the resolution convoking or providing for a convention by virtue of Article XV of the Constitution.

In the second place, the mere fact of having authority to amend or revise the Constitution is not inconsistent with the oath to support and defend the Constitution because it will be noticed, for instance, Mr. President, that in the Constitution now Congress has the power to directly propose amendments to the Constitution, to propose directly a revision of the Constitution and yet, in spite of that, under Article XIV, Section 2, members of Congress are required to make an oath to support and defend the Constitution.

It is clear that under the Constitution itself, the ^{view} fact is that there is no inconsistency with the function of proposing amendments to the Constitution and the oath to support and defend the Constitution.

The error, it seems, Mr. President, lies in the fact that some delegates to the Constitutional Convention believe that they are amending the Constitution or revising the Constitution. That is not

so. They are only called upon to propose amendments or revisions of the Constitution. It is the people that will amend or revise the Constitution by approving in plebiscite the proposed amendments or revisions made by the Constitutional Convention. In other words, insofar as their function to propose amendments to the Constitution is concerned, they stand on the same footing as the joint session of Congress called to propose amendments to the Constitution or call a convention. And if members of Congress are required to take an oath to support and defend the Constitution as not inconsistent with their function to propose amendments, I cannot see any reason why there can be a conclusion that the Constitutional Convention delegates stand on a different footing.

Besides, Mr. President, let us not forget that in 1967 when we provided ~~approval~~ for the Constitutional Convention, we also, in Congress itself, approved a joint resolution amending the Constitution allowing members of Congress to become delegates to the Constitutional Convention. Why? Because it was the view of that joint session convening the Convention that the position of ^a delegate was a public office and, therefore, members of Congress could not run for delegate without forfeiting their seats, unless the Constitution itself was amended to allow members of Congress to run as delegates. The people rejected that amendment. ST But the point is that in that joint session where **171**

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VOTING
~~REX~~ ON THIRD READING
H. NO. 3184 - BO. COGON/BO. J. AVILA

SENATOR TOLENTINO. Mr. President, I move that we vote on third reading on ~~Senate~~ House Bill No. 3184. Printed copies on this bill were distributed on April 5, 1972.

THE PRESIDENT. ~~SENATOR TOLENTINO'S MOTION IS DENIED.~~ Voting on third reading on ~~Senate~~ House Bill No. 3184 is now in order. The Secretary will please read the title of the bill only, if there is no objection. (There was none.)

THE SECRETARY:

"AN ACT CHANGING THE NAME OF BARRIO COGON IN THE MUNICIPALITY OF PINTUYAN, PROVINCE OF SOUTHERN LEYTE TO BARRIO JUAN AVILA."

THE PRESIDENT. ~~SENATOR TOLENTINO'S MOTION IS DENIED.~~ The Senate will now proceed to vote on the bill. The Secretary will please call the roll.

The Secretary called the roll and the result of the voting was as follows:

YES - 13

Sen. A. Almondras	Sen. A. Padilla
" M.W. Antevine	" L.B. Perez
" H.Z. Benitez	" G.M. Roxas
" XXXXXXXXXXXX	" J.J. Rey
" E.M. Maseda	" L. Sumulong
" R.V. Mitra	" M. Tamame
	" A.M. Tolentino
	THE PRESIDENT

NO - 0

ABSTENTION - 0

THE PRESIDENT. ~~SENATOR TOLENTINO'S MOTION IS DENIED.~~ With thirteen affirmative votes, no negative vote and no abstention, ~~Senate~~ House Bill No. 3184 is approved on third reading.

* With explanation of vote.

~~APPOINTMENT OF CONFERENCE COMMITTEE ON~~
H. No. 4052-CON-CON FUNDS

SENATOR TOLENTINO. Mr. President, in the event that the House of Representatives should not accept the amendments introduced by the Senate to House Bill No. 4052, I move that we ask for a conference with the House and appoint as our conferees Senators Teves, Tolentino and Mitra.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the motion is approved.

the Convention was called, that joint session itself felt that the position of delegate was an office. In fact, the very resolution calling for the Constitutional Convention provided that the office of delegate shall not be incompatible with any other office. It is, therefore, an office. It is an office to such an extent that when we approved the CONCON law providing for the election of delegates, we also disqualified all other public officials so that there may be no two offices at the same time held by public officials. So, for ^{all} this reason, I felt that it would be justifiable to require that like all other public officers, the delegates to the convention should take the oath required by the Constitution as this would not be incompatible with their function.

Mr. President, I wanted to make this of record because there had not been a full opportunity for placing this on record in the course of the deliberations on this bill. Thank you, Mr. President.

THE SECRETARY.

Senator Leonardo PerezYes.

THE PRESIDENT. With twelve affirmative votes, no negative vote, and one abetention, House Bill No. 4052 is approved on third reading.

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apartments are the well-to-do people, and people who can afford

to pay a room or two rooms or the whole floor of an apartment

do not belong to the poor class of people. *Under this bill* Here the transaction

relates merely to the acquisition of a house to live in. However,

if we are to include or to give protection to buyers of condominium *there is a need for amendments, sale of condominium apartments* apartment, ~~which~~ strictly speaking, is not a real estate transaction,

because real estate refers to the land where the condominium

apartment is located, although the buyer of a condominium apartment

becomes an owner pro-indivise of the lot on which the apartment is

constructed. *Because* when the buyer buys a condominium apartment,

say a room, or a floor, or two rooms in a condominium apartment, it

includes already the whole lot; but, however, all the buyers of the

condominium apartment become only pro-indivise owners of the lot

or real estate on which the condominium apartment is located. Now,

if it is the wish of my colleague to include these buyers of conde-

minium apartment, I will have no objection *if* when the amendment

which may be accepted will *read* run as follows:

On line 4, after the word "purposes" we may add: "INCLUDING
RESIDENTIAL CONDOMINIUM APARTMENTS", in which case this Section 2
will read as follows:

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"It is hereby declared a public policy to encourage the acquisition of real estate for housing purposes INCLUDING RESIDENTIAL CONDOMINIUM APARTMENTS by providing protection to buyers thereof",

etc., and so on. ~~What I want to mean will be the ...~~

SENATOR TOLENTINO. Madam President, that is not exactly my point.

My point is this: That under Section 3, the provision is broad enough because it only says "real estate on installment payments." That phrase is broad enough to cover the purchase, for instance, of land where he will put up a poultry or a piggery or where he will construct a church, or if it is a group, they may want to construct a church and so they buy on installment. That is not for us ...

~~Senator Tolentino~~

~~or where I would construct a church. If it is a group that wants to~~
~~construct a church,~~ ^{and} they buy on installment. That is not for housing.

SENATOR ROY. That is right, Your Honor.

SENATOR TOLENTINO. And if they are covered by Section 3, if on the installment plan but is not within the policy, the effect of this would be that if the property purchased is real estate for housing purposes, then it is covered by the policy and the stipulation that is contrary to what is provided here may be declared contrary to public policy, and they are void. But if the property involved is not for housing, then the stipulation contrary to what is provided here may be valid because the stipulation is the law between the contracting parties. It would not be contrary to the policy laid down in the bill.

SENATOR ROY. Yes, Your Honor, that will be excluded from the declaration of policy if it is for housing. Anyhow, in the draft of the bill of the gentleman from Laguna and Ilocos Sur and Manila, it is excluding industrial lots.

SENATOR TOLENTINO. Well, a church lot is not an industrial lot.

SENATOR ROY. Excluding lots not intended for housing, that is a ^{the} general provision.

SENATOR TOLENTINO. Well, that is different.

SENATOR ROY. Maybe for a factory or for other purposes provided

it is not for housing. Your humble servant wants just to cover housing.

SENATOR TOLENTINO. Well, that is the point, there is a difference between the intention of the distinguished President Pro Tempore who introduced the provision on policy and the intention of the sponsor. Now, which one shall be followed? I do not know which one to follow.

SENATOR ROY. I believe the distinguished sponsor wants to give emphasis on this real estate for housing, Your Honor.

THE PRESIDENT. May the Chair just point out that when the sponsor accepted the amendment of Senator Roy, and that is, on Section 2, the addition for housing purposes after "real estate" has really changed this whole bill. So, it will depend upon the sponsor, whether in accepting the amendment of the distinguished President Pro Tempore wherein the term used is "for real estate for housing purposes," the sponsor really intended this to be ⁱⁿ the bill. Because if so, it would make it very easy, he would just then have to suit Section 3 to Section 2.

SENATOR MACEDA. Madam President, I will be candid enough to admit that as a newcomer, when I accepted Section 2 completely, I did not fully realize the implications of the acceptance of a section on declaration of policy, and that, I am grateful to the Majority Floor Leader at this time for pointing this out. As I said, as far as I am concerned, my intention was to provide protection to small buyers of real estate,

whether it is for housing or for anything else. And the reason why we excluded ^{commercial} ~~residential~~ and industrial lots is because that is usually as stated, big transactions, large amounts are involved, and really the two contracting parties are on equal levels to protect themselves. They usually have their lawyers to go over their contracts, and the like, their agents to negotiate. But whether it is for housing, for a small chapel, for a small orchard -- because there might be agricultural land that would not be covered by the Land Reform Code, ^{if} basically the contract involves a small buyer or a small piece of property involving, well, an amount that is not really, as we would say, within the reach of the higher class, rather, ^{or} beyond the reach of the lower class, then my intention was to provide protection in whatever form it would be best provided.

SENATOR TOLENTINO. If that is the intention of the measure and of the sponsor, then the declaration of policy would perhaps have to be reworded by eliminating reference to real estate for housing purposes. We could say, for instance, "it is hereby declared a public policy to protect buyers of real estate on installment payments against onerous and oppressive conditions."

SENATOR MACEDA. It would seem to me that that would cover both my intention and both the intentions of the distinguished Senate President Pro Tempore. And if I may add a comment to what he had said, it is true

that at the moment, residential condominium apartments are really still limited to the higher class. But I think, looking forward, the time will come as it is true, let us say, in Hongkong and Singapore, that eventually residential condominium apartments would just be as much within the reach of the ordinary wage earner, as a small house or lot on a subdivision somewhere. So, I believe, Madam President, that the proposed amendment to Section 2 of the Majority Floor Leader, would satisfy both the intentions of the Senate President Pro Tempore and this humble representation because since it is more general in scope, it would include the acquisition of real estate for housing purposes.

SENATOR TOLENTINO. Madam President.

THE PRESIDENT. The Majority Floor Leader.

SENATOR TOLENTINO. If the sponsor of the bill would be agreeable to that, I would therefore, with the permission of the Chamber, without asking for reconsideration anymore of Section 2, I would like to propose, if acceptable to the distinguished President Pro Tempore, that we reword Section 2 as I had already indicated.

THE PRESIDENT. What does the sponsor say?

SENATOR MACEDA. I accept the rewording, Your Honor.

SENATOR TOLENTINO. I propose, Madam President, ...

THE PRESIDENT. I think the question was directed to the President Pro Tempore since that is his amendment.

SENATOR TOLENTINO. I would propose, Madam President, that Section 2 be reworded to read as follows:

"It is hereby declared a public policy to PROTECT BUYERS OF REAL ESTATE ON installment payments against onerous and oppressive conditions."

That is the policy.

SENATOR AQUINO. Madam President.

THE PRESIDENT. The gentleman from Tarlac.

SENATOR AQUINO. With the permission of the gentlemen on the floor.

May I inquire what are those onerous and oppressive conditions? This is a contract between two equal parties. As already stated by the gentleman from Pangasinan, I think, we can regulate the relations, but to protect them against the other, what would be the kind of protection, if a buyer wants to buy on those conditions? He is free to buy and not to buy. Now, what are these onerous and oppressive conditions?

SENATOR TOLENTINO. I think the conditions are those provided for in Section 3, Section 4 and Section 5, as the result or, rather, the rules that we want to lay down, and that, we will need a new provision to render effective this protection. We will need a section, for instance, which would read as follows -- which I will present later on, a section near the end ~~already~~ -- "Any stipulation in any contract hereafter entered into contrary to the provisions of Sections 3, 4 and 5 shall and be null void." That is the protection.

SENATOR AQUINO. But, Your Honor, I am trying to go to the main part principal of the whole thing. We are talking here of the protection of the buyer. Now, the buyer is free to buy or not to buy -- and there is a free market. Everybody is selling subdivision. Why should we have a

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policy that will protect these buyers. If he does not want to buy, why should he buy?

SENATOR TOLENTINO. I would like to yield the floor now to the distinguished sponsor because these questions are directed to the very purpose of the bill.

THE PRESIDENT. The sponsor of the bill.

SENATOR MACEDA. Madam President, to begin with, the difficulty of my distinguished colleague from Tarlac is based on his premise that in these cases buyer and seller are on the same footing. The whole bill is precisely premised on the acceptance that the small buyers, lowly paid government servants, wage laborers and ordinary citizens, so to speak, are usually confronted with this situation where they have to buy real estate under contracts already considered as standard and printed, and the provisions of which, as was explained by our distinguished colleague from Pangasinan have been up to ~~this point is interpretation of the Civil Code~~

~~SENATOR MACEDA.~~ . . . as was explained by our distinguished colleague from Pangasinan, have been up to this point in ^{the} interpretation of the Civil Code -- some of which he disagrees with -- and the provisions of these contracts have been sustained as not prohibited by existing laws. And, therefore, as I said, Your Honor, in my short ^{sponsorship} ~~privilege~~ speech, we are entering an era really, where it is accepted that there is a necessity to provide for more measures to protect the consumers, and this is only one of them, Your Honor.

We have re-reported out the bill of the distinguished lady from Cavite and Laguna on a general consumer protection law where, for example, we do not accept the fact too, that when a poor consumer, or when a consumer goes to a supermarket, as you would say: well, it is up to him whether to buy that milk or not; he is free not to buy. Well, we feel, and I think, that it is accepted, as well as in other jurisdictions, that that is no longer true that the consumer should operate under what they say: ^A buyer beware theory. In the same way, as you would say that: well, if he goes to Northern Motors or to Delta Motors, it is up for him whether he wants to buy the car ~~EX~~

or not. If he does not finally come up with a satisfactory ^{product} ~~tion~~, he was free to examine it in the first place; he can get a mechanic and examine it. But, I think that, as Your Honor would agree, all of these things now require that -- and considering that business has come to a point of sophistication, so to speak -- probably, the sellers have the upperhand and so much advantage ^{is} in their favor. The cards are stacked up in their favor. And, as you and I know, most of these small ^{prints} ~~strips~~, whether it is in insurance contract or sales contract, or whatever it is ^{are} really hardly ~~get~~ read. And Your Honor would probably say: well, that is the fault of the buyer. He is supposed to read it.

But the realities are such that, we have to accept ^{that} ~~it is~~ not fair ^{many practices are} ~~that~~ as far as the principal problem we seek to prevent, is concerned. And that we see now that these installment sales are arbitrarily and unreasonably cancelled without notice.

The present provisions of many contracts which I presented, are to the effect that the owner can automatically consider the contract forfeited, even without notice to the buyer for any violation in the contract, not only

for nonpayment of instalment, but that automatically, all the payments shall be considered as liquidated damages and rentals for the property.

And so, ~~the example that~~ we used during our ² sponsorship speech, ~~was~~ ^{as an example, the} to the effect, ~~that~~ under present provisions, ⁱⁿ supposing you have a 10-year installment contract. Even if ^{a person} you have paid nine and one-half year^s of installment over a nine and one-half year period, if, let us say, on the seventh month of the last year ^{he} you defaulted, and the owner says: "well, you have defaulted and pursuant to our contract, you have defaulted; so, I can cancel the contract; I consider the contract cancelled," ^{his} ~~and your~~ nine and one-half years of installment payments are all forfeited as liquidated damages.

It was our feeling that this was a rather very unfair situation and that the law must now step in to tell the vendors, or buyers and sellers, that this provision shall not be allowed by law as a matter of protection to our buyers.

SENATOR AQUINO. That is one way of looking at it, Your Honor. But I also know of situations where people rent houses ^{and} ~~and then~~ they do ^{not} ~~not~~ pay for months on end.

And the poor owner of the house has to go to court to eject them. And then, they even lose the toilet bowls and ~~then, they lose~~ all the wiring connections. Where is the protection of the house owner? (But my point is: these are free contracts and when we say to protect the buyer, you give the impression that the seller is already taking advantage or exploiting. That thinking is not quite accurate. I will not say that Ayala is exploiting its buyers of lands and, again, I ~~would~~^{will} say that the subdivision owners have the right to impose certain conditions.

For example, in the case of Ayala, if you do not build within two years, they cancel the contract automatically. You cannot use more than 60% of the land that you buy; you have to set back at least ten meters from the road. You can consider these onerous conditions. They sell you one lot. They will tell you: you can only build one dwelling; you cannot build three dwellings, even if you have three children. Now, many people have contested that this is an onerous condition imposed by the seller. But, if you do not want the regulation of that subdivision to maintain uniformity, do not buy at Ayala. But this opens implications, Your Honor, which are far-reaching.

We are not only talking here of installment sale when you say conditions. onerous and oppressive. What may be oppressive to me may not be oppressive to the other members. -What is onerous to me may not be onerous to the other members.

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As I already pointed out, in the case of Ayala Subdivision:

- (a) you must be a member of the association;
- (b) you must give so much money;
- (c) you must contribute for garbage;
- (d) you can only use 60 per cent of your property;
- (e) you have to set back ten meters;
- (f) you cannot ^{construct a} ~~build~~ ^{of} building more than nine meters;
- (g) you cannot construct more than three stories.

Now, these are all conditions imposed on the ownership of that land, and these are respected.

SENATOR MACEDA. Well, Your Honor, as we ~~have~~ explained earlier and which we are happy to further explain to you, the effect of this law does not prohibit the parties from agreeing on those conditions. The only effect is that if those conditions are agreed upon, then the seller would have the right to ~~serve notice~~ serve notice, pursuant to the provisions of the law, that a violation has been so committed. And if he decides to terminate the contract, the only thing that we are asking for is that if he has paid two years -- you will notice if he has not paid two years which is the usual building clause for Ayala or Ortigas contract, there is no refund --

but if he has paid at least two years but if the owner would like to cancel, then he should at least refund part of the money of the poor buyer.

Now, I do not blame Your Honor for also thinking on the side of the vendor, which we do. That is why we called a public hearing on this. And, Your Honor, even Ayala whom you have cited, and Ortigas have sent their representatives -- and subdivision owners and realtors. This was already, in principle, agreed upon by all of those who attended the public hearings. And that is why when the Senator from Lanao del Sur and the distinguished lady from Cavite and Laguna suggested that we expand the coverage of this bill, of course, I said then and I say now, this bill, in ^{as} ~~itself~~ ^{itself} ~~itself~~, is only probably 10 per cent of what the public is clamoring for in terms of protection to installment buyers, specially subdivision sales.

The distinguished gentleman from Lanao del Sur and the madam presiding officer now suggested that there should be an inclusion here as to the nonfulfillment of warranties in subdivision contracts against nonconstruction of roads, light, water and other facilities within the subdivision.

SENATOR AQUINO. Your Honor, I agree.

SENATOR MACEDA. Yes, Your Honor.

SENATOR AQUINO. I think we should increase the penalties

for such nonfulfillment of warranties. But my point is, I think we should limit ourselves to due notice. In other words, before a seller can sell, the contract must be explained properly, and there must be no small prints, and all the warranties must be spelled out, and any violation of the warranties must be dealt with accordingly.

For example, there are certain people who sell lots in Antipolo. Then the land is nonexistent. And there are many overlapping claims on this respect. I believe that such subdivision owners and such sellers should be dealt with severely by the law.

But, Your Honor, if I am a seller and I give a contract which is not violative of the law, not prohibited by the civil code, and I will give you due notice and you read it, and you buy it, and you want it, well, I feel that we should not put any restrictions on that point, as long as he does not violate the civil code.

My point, Your Honor, is that while it is true that we must protect the buyer, ~~so-called~~, this might just discourage the very purpose that we want to arrive at, which is to encourage the acquisition of real estate.

SENATOR PADILLA. Mr. President.

THE PRESIDENT. Gentleman from Pangasinan and Manila.

SENATOR PADILLA. Mr. President, we better consider that proposal when its author is present so that he can justify it. Let us go to other individual amendments.

SENATOR MACEDA. Well, I withdraw the amendment.

THE PRESIDENT. ^{The} Amendment is withdrawn. Individual amendments.

SENATOR PADILLA. On page 2, lines 13 and 14, I suggest that we eliminate the words "despite the grace period granted in the preceding subsection." Why? Because if there is a grace period, then the contract cannot be cancelled during the grace period. If we retain this clause, it may be a contradiction in terms: the contract is cancelled despite a grace period.

SENATOR MACEDA. I accept the amendment, Mr. President.

THE PRESIDENT. Eliminate ^{the} from the word "despite" up to the word "subsection." Is there any objection? (Silence.) There being none, the amendment is approved.

SENATOR PADILLA. Now, we have been using the words "buyer" and "vendee". Some sections have "buyer", other sections have "vendee". We better use one term because "buyer" and "vendee" are the same. However, if we use the word "vendee" in one section and we use "buyer" in the next section, it may give

the wrong impression that they ~~are~~ refer to two different persons. So, if the distinguished author and sponsor prefers the word "buyer", let us change the word "vendee" to "buyer".

SENATOR MACEDA. Well, I will go along with whatever is the preference of my law professor.

THE PRESIDENT. In such phrase where "buyer" appears, what is the word to be used now -- vendee or the reverse?

SENATOR MACEDA. I think "buyer" is a more popular term, Mr. President.

SENATOR PADILLA. You know, ^{how that} the terms used in the Civil Code ^{uniformly in terms,} are "vendor" and "vendee". When I suggested that ~~thought~~ I did not make any reference to an amendment to the Civil Code. Perhaps, we better use the words "buyer" and "seller".

THE PRESIDENT. All right, so the amendment will be: that whenever the word "vendee" appears, substitute it with the word "buyer".

SENATOR PADILLA. And whenever the word "vender" appears, substitute it with the word "seller".

THE PRESIDENT. ^{Is there any} ~~is there any~~ objection? (Silence.) There being none, the amendment is approved.

SENATOR PADILLA. I notice that the clause on page 2, lines 8 to 12 appears on page 3 from line 23 up to page 4, line 1. Why must we repeat the same paragraph?

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SENATOR MACEDA. Section 3, Your Honor, refers to cases where the buyer has paid at least two years of installment, while Section 4 refers to cases where the buyer has paid less than two years of installment.

SENATOR PADILLA. Why don't we say after Section 4, "in the preceding Section 3 and 4", making them applicable to both Sections and repeat the phrase once.

SENATOR MACEDA. I have no objection, Mr. President.

SENATOR PADILLA. That is to improve the form.

SENATOR MACEDA. Thank you for the suggestion, Your Honor.

THE PRESIDENT. What is the amendment now to improve the form?

SENATOR PADILLA. "UNDER THE PRECEDING SECTIONS 3 AND 4 THE VENDEE SHALL HAVE THE RIGHT TO SELL HIS RIGHTS OR ASSIGN THE SAME" — that is following the language of the Senator from Capiz — "TO ANOTHER PERSON OR TO REINSTATE THE CONTRACT BY UPDATING THE ACCOUNT DURING THE GRADE PERIOD AND BEFORE ACTUAL CANCELLATION OF THE CONTRACT."

THE PRESIDENT. What does the sponsor say?

SENATOR MACEDA. I have no objection, Your Honor, of course with the addition that that means to say a deletion on page 2 of lines 8 to 12.

SENATOR PADILLA. Yes, Your Honor.

THE PRESIDENT. Is there any objection? (Silence.) There being none, the amendment is approved.

SENATOR PADILLA. Of course, the word "vendee" should be changed to "buyer".

THE PRESIDENT. Well, there is an anterior amendment to ^{make} care of that.

SENATOR PADILLA. Now, on page 2, line 1, I propose ~~to~~ to eliminate the words "without interest" between the commas, because if the installments have been unpaid and the contract provides for interest, why must we put there an agreement?

SENATOR MACEDA. Yes, I think we can clarify this Your Honor by saying "without additional interest".

SENATOR PADILLA. Perhaps.

SENATOR MACEDA. Yes.

SENATOR PADILLA. Perhaps. I am trying to save the bill from possible invalidity, because if the contract provides for interest and now we will ^{insert the phrase "without additional"} provide ~~without interest~~, the attack may be that we are impairing the obligations of contracts.

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SENATOR MACEDA. May we, therefore, amend, Mr. President, line 1 between the words "without" and "interest" by inserting the word "ADDITIONAL".

THE PRESIDENT. Is there any objection? (Silence.) There being none, the amendment is approved.

SENATOR PADILLA. On page 2, line 6, the words "its amendments". Perhaps, Your Honor more accurately refers to extensions because this has only reference to the period ...

SENATOR PADILLA. Now, on page 2, line 6, the words "its amendments," perhaps, Your Honor more accurately refers to extensions, because this has only reference to the period or life of the contract. So, I suggest, in lieu of the word "amendments" on page 2, line 6, we change it to "EXTENSIONS".

THE PRESIDENT. What does the sponsor say?

SENATOR MACEDA. I accept the amendment, Mr. President.

THE PRESIDENT. Is there any objection? (Silence.)

There being none, the amendment is approved.

SENATOR PADILLA. Now, Mr. President, we sometimes use the words "real estate property" like in the title ^{of the bill} and on page 1, lines 9 and 10, but on line 4, we used the word "real estate". Why don't we use just one term "real estate"?

THE PRESIDENT. What does the sponsor say?

SENATOR MACEDA. I accept the amendment, Mr. President.

THE PRESIDENT. Is there any objection? (Silence.)

There being none, the amendment is approved.

SENATOR PADILLA. So, ~~that~~ ^{it} means ^{that} on page 1, line 10, eliminate the first word "property" -- "FINANCING of real estate on installment payments".

THE PRESIDENT. As a consequence of the first amendment.

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SENATOR PADILLA. Now, Mr. President, regarding this Section 2 which was proposed by our friend, the distinguished Senate President Pro Tempore, of course, is in line also with the title of the bill. On page 1, line 5, "PROVIDING PROTECTION TO", why don't we just say, "by regulating the relations of sellers and buyers thereof on installment payments." And also, delete the clause "AGAINST ONEROUS AND OPPRESSIVE CONDITIONS IMPOSED THEREIN."

SENATOR MACEDA. Mr. President, may I ask the distinguished Senate President Pro Tempore to answer *the query.*

SENATOR PADILLA. Because what may be onerous and oppressive is the automatic cancellation of a contract of sale or contract to sell on installments. What is onerous and what is really an unhappy situation that sometimes has been justified by a few decisions is the recognition of a unilateral and automatic cancellation of a contract. Under this bill, and I believe even under the Civil Code, there is no such thing as an automatic or unilateral cancellation or ^{rescission} ~~rescission~~ of contract. Because as I stated earlier, Article 1191, paragraph (3), grants even a defaulting debtor time to pay. And Article 1492 is more specific, that the debtor, in this ^{case of installment purchase} case, the buyer or vendee on installments, has the right to pay "even after the expiration of the period." Now, as I stated in a previous interpellation, I do not feel

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at ease by saying that we are protecting one party as against another. .

We should protect both parties. Therefore, it is more accurate to say
that this bill is
we want to regulate the transactions or the relations between sellers
and buyers of real estate on installment payments, rather than say, it
is the policy of the State to protect the buyers.

SENATOR ROY. Can I reply now, Mr. President?

THE PRESIDENT. The gentleman from Tarlac, Senator Roy.

SENATOR ROY. Mr. President, from the start of our discussion or debate on the bill, questions have been raised on the possible infringement of the provision of the Constitution. Statements were made to the effect that under the police power ^{of the State,} we can regulate or we can interfere in the relations between the buyer and the seller of real estate. As a matter of fact, some of my colleagues during the debate have raised the question of constitutionality of the proposed bill, because we are really interfering ^{with} in the freedom of parties to contract. Though, of course, we have had pieces of legislation regulating or interfering with the freedom of contract, such as for instance, ^{the Rental Control Law.} ~~rentals. We approved a law here on rentals.~~

SENATOR PADILLA. Your Honor, in my opinion that ^{law on rentals} is unconstitutional.

SENATOR ROY. I beg your pardon, Your Honor?

SENATOR PADILLA. That law on rentals, in my opinion, is unconstitutional and unwise.

SENATOR ROY. There you are. That is one instance wherein in this kind of legislation interfering with the freedom of contract, the question of constitutionality is always raised, and also in this kind of contract. It has been a classical feature of legislation by stating a policy of the State, especially at the beginning or in

the first section of the bill. The Legislature can take refuge in invoking the police power as a justification, perhaps, in interfering with the freedom of contract or freedom of parties to contract. It has been settled in our jurisdiction that when a policy is declared in law as a public policy and approved by Congress, the court cannot even inquire as to the wisdom and the declaration of that policy. And it is for that reason, Your Honor, that I thought of inserting these provisions for Congress to establish as a public policy the encouragement of acquisition of real estate for housing purposes, by providing protection to buyers thereof on installment payments against onerous and oppressive conditions imposed therein. So, I was thinking that this is a clear declaration of policy. I don't think there is anything that is offensive in this declaration of policy. If we just provide here as a declaration of policy the regulation of the relations of buyers and sellers of real estate on installment, we are not declaring a public policy because this measure really seeks to regulate. Some of the provisions of this contract really interferes directly with the freedom of parties to contract. In other words, there is some doubt about the constitutionality, and I was thinking that by the declaration of policy, we may invoke the police power of the State -- the general welfare clause.

SENATOR PADILLA. Your Honor, I have no objection to the first portion. If Your Honor insist on a declaration of public policy to encourage the acquisition of real estate for housing purposes, I have no objection to that. But the latter portion, if Your Honor will consider, "by regulating the relations of sellers and buyers thereof on installment payments." Or, if Your Honor want to add further, "to prevent automatic cancellation or rescission of their contracts."

SENATOR ROY. What is the objection of Your Honor to the words "AGAINST ONEROUS AND OPPRESSIVE CONDITIONS"? There are really onerous and oppressive conditions in the contract of real estate on installments. I have been a victim of that several times.

SENATOR PADILLA. The only onerous and oppressive stipulation is the automatic cancellation. That is why this bill provides for grace period, provides for surrender value and provides for other reliefs.

SENATOR ROY. Will Your Honor please restate the amendment that you would like to propose.

SENATOR PADILLA. Section 2 -- "IT IS HEREBY DECLARED A PUBLIC POLICY TO ENCOURAGE THE ACQUISITION OF REAL ESTATE FOR HOUSING PURPOSES BY REGULATING THE RELATIONS OF SELLERS AND BUYERS THEREOF ON INSTALLMENT PAYMENTS TO PREVENT AUTOMATIC CANCELLATION OR RESCISSION OF THEIR CONTRACTS."

~~SENATOR PADILLA. . . . by regulating the relations
of sellers and buyers thereof for installment payments;
to prevent automatic cancellation or rescission of their
contracts."~~

SENATOR ROY. I have always thought, Your Honor, that
it is not only the automatic rescission of contracts which
may be found ~~XXXXXX~~ onerous and oppressive. There are
other conditions, Your Honor.

SENATOR PADILLA. But this bill does not say "other
conditions".

SENATOR ROY. Yes, that is why, it is espoused in
general terms: onerous and oppressive. It is for the
court^s to determine^{if} the conditions ~~that~~ are really onerous
and oppressive.

SENATOR PADILLA. Moreover, this bill does not intend
to amend the entire Civil Code provisions on contracts and
obligations.

SENATOR ROY. I agree with Your Honor.

SENATOR PADILLA. Now, first of all, ^{this provision} why are we going
^{may} to excite or encourage litigation ^{for} when a party may say:
this is an onerous stipulation; ^{but the} another says: this is an
oppressive condition? Well, the remedy^s, if any, are pro-

vided for in the Civil Code. We may be encouraging litigation by placing this ^{clause} against onerous and oppressive conditions imposed therein." First of all, the buyer may say: this is imposed; the seller may say: No, this is agreed, not imposed; this is the contract.

SENATOR ROY. That is true, Your Honor. ^{It} That is a contract.

SENATOR PADILLA. A contract is essentially consensual, bilateral ~~and~~ and commutative. So, technically and legally, there is no such thing as an imposition on a contractual relation.

SENATOR ROY. But in truth and in fact, in many kinds of contracts, like the ^{de retro sale} facto de retro, or the installment payments, there are onerous and oppressive provisions in the contract. How many of the buyers of real estate have taken the ⁱⁿ pain of reading line by line the conditions of the contract, like, for instance, ^{when} the condition says: if you fail to pay two installments, your contract is rescinded and you ~~lose~~ ^{are deemed forfeited} all the installments that you have paid. That is common in many contracts.

SENATOR PADILLA. That is a bad provision and that is precisely why ^{at the bill needs} we want to prevent or ^{to} stop this automatic

or unilateral [^] ~~provision~~ ^{cancellation} of contract...

SENATOR ROY. That is one automatic provision of cancelling a contract.

SENATOR PADILLA. By just inserting a provision that failure to pay one or two installments will automatically cancel ~~the~~ contract.

SENATOR ROY. That is only one, Your Honor. But there are other conditions which are onerous and oppressive, besides that provision on automatic rescission of the contract in favor of the owner of the real estate, or of the seller. There is only one of those onerous and oppressive provisions.

SENATOR PADILLA. Yes, Your Honor. But that is all that is covered by this bill.

SENATOR ROY. No, Your Honor, this bill is clearer.

SENATOR PADILLA. That is why, ^{this bill} we grant^s a grace period; [^] we grant^s a surrender value or we recognize^s

SENATOR ROY. There are conditions also about interest which are very oppressive and onerous...

SENATOR PADILLA. But this bill does not automatically speak of it.

SENATOR ROY. But which, in truth or in fact, are really usurious like, for instance, a condition which says that upon failure to pay installments, you will be sued in court and

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you have to
pay 10% additional for legal services, plus additional
penalty in the form of so much percent of your ^{overdue} account. ~~and~~

SENATOR PADILLA. Your Honor, regarding that point,
that is covered by the Civil Code. The courts may always
mitigate the penalty provided ^{in contract} by the party. And not only
that, if it is iniquitous or ^{unconscionable} ~~unconscionable~~, the courts will
not enforce it. This is provided for in the Civil Code.

SENATOR ROY. Your Honor, this is a special piece of
legislation. They can put it here. This is not an amendment
to the Civil Code. Your Honor proposed an amendment, I
remember, which was rather withdrawn because of the provision
of the Civil Code. I wish we have not removed that from
the provision of this law. I agree with Your Honor that
the Civil Code can take care of some questions that may
arise on this.

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SENATOR ROXAS. Mr. President.

THE PRESIDENT. The gentleman from Capiz, with the acquiescence of the gentlemen on the floor, is recognized.

SENATOR ROXAS. Mr. President, with the permission of the gentlemen on the floor, I have requested the distinguished gentleman from Pangasinan to allow your humble servant to intervene, considering that it is my impression that the difference between the two gentlemen on the floor is merely a matter of approach.

SENATOR ROY. Yes.

SENATOR ROXAS. The distinguished gentleman from Tarlac, the Senate President Pro Tempore, wishes to stress that it is the purpose of this bill to prohibit onerous and oppressive conditions, while I understand the distinguished gentleman from Pangasinan merely wishes to present the policy in a more positive light. So, I was going to suggest for the consideration of the two gentlemen, Mr. President, the following wordings: "It is hereby declared a public policy to encourage the acquisition of real estate for housing purposes by providing equitable terms and conditions on installment payments."

In other words, we cover both objectives of the two ~~distinguished~~ gentlemen on the floor.

SENATOR ROY. To me that will be a very weak declaration of policy.

SENATOR ROXAS. Well, that is precisely the bone of contention.

SENATOR ROY. An issued declaration of policy must have a strong and solid basis. Like, for instance, public policy is against onerous and ~~oppressive~~ ^{oppressive} conditions imposed on any real estate transaction.

SENATOR ROXAS. Well, ~~xxx~~ ^{that is,} Your Honor...

SENATOR ROY. That is up to the court^s to determine. If the court says it is onerous and ~~oppressive~~ ^{oppressive}, it falls within the declaration of public policy.

SENATOR ROXAS. Yes.

SENATOR ROY. As I said awhile ago, Your Honor, we always take as a refuge for invoking the police power of the state on public welfare a declaration of public policy. That is classical in all legislation.

SENATOR ROXAS. Your Honor is correct.

SENATOR ROY. And I was thinking, Your Honor, that with this, ~~with~~ ^{the} provision of Section 2, any doubts on the constitutionality of the law will have to be resolved in favor of the party which may be the victim, or which may be aggrieved, by onerous and oppressive conditions; and it is for the court to determine.

SENATOR ROXAS. Your Honor is correct. But as I was ~~saying~~ ^{saying}, I have been listening to the exchange of views and there is really no basic difference between the gentleman from Pangasinan and Your Honor. I think it is just a question of phraseology and, in relation thereto, may I say that it must be presumed that public policy is against

onerous and oppressive conditions. This is a fact that we must all accept under the law; and it is for this reason that I have suggested, if only to provide a half-way measure between the two views of the two distinguished gentlemen, that instead of stating by providing protection to buyers thereof on installment payments, etc. ...

SENATOR ROY. Will Your Honor repeat it?

SENATOR ROXAS. ... that we merely state: "It is hereby declared a public policy to encourage the acquisition of real estate for housing purposes by providing equitable terms and conditions for...." I mean, this is just the thought. Of course, we can rephrase this later on, if the thought is acceptable to the distinguished gentlemen. But I have requested this permission if only to settle this impasse, Your Honor. I am not particularly --

SENATOR ROY. Your Honor, since legislation is the art of compromise, I may agree to my professor in Civil Law if he accepts that.

THE PRESIDENT. Has the amicus curiae been approved?

was proposed by Senator Laurel and involves a new paragraph, may I formally change the paragraph numbers. On the first page, line 8, "SEC. 2" shall now read as "SEC. 3."

THE PRESIDENT. That can be abbreviated by asking for a renumbering of all the paragraphs accordingly.

SENATOR MACEDA. Yes, Mr. President, renumbering up to Sec. 5.

THE PRESIDENT. Up to Sec. 5. Is there any objection?
(Silence.) There being none, the motion is approved.

SENATOR MACEDA. After Sec. 5, Mr. President, there is a proposed new section to read therefor as Sec. 6 which is suggested by Senator Laurel to read as follows:

"UPON THE EFFECTIVITY OF THIS ACT ALL EXISTING
CONTRACTS FALLING UNDER SECTION THREE HEREOF SHALL BE
SUBJECT TO THE PROVISIONS OF THIS ACT."

Well, I would like to bring ^{it} up, Mr. President, for discussion. The Committee is not adopting the amendment but it has been submitted.

BILL ON SECOND READING
Protection to Buyers of Real Property
S. NO. 775 - ~~Realty Installment Buyer Pro-~~
~~tection Act~~ - (Continuation)

SENATOR TOLENTINO. Mr. President, I move that we resume consideration of Senate Bill No. 775 being sponsored by the distinguished gentleman from Laguna and Ilocos Sur.

THE PRESIDENT. Consideration of Senate Bill No. 775 is resumed. The gentleman from Laguna and Ilocos Sur has the floor.

SENATOR TAMANO. Mr. President.

THE PRESIDENT. Gentleman from Lanao del Sur.

SENATOR TAMANO. Mr. President, it has been clarified to this humble representation that the point that we have sought to introduce by way of amendment which I had explained as paragraph 2 and paragraph 3, Section 5, could better be considered in a separate measure. For that reason, Mr. President, I withdraw these particular proposals which I have called as paragraph 2 and paragraph 3 of Section 5.

THE PRESIDENT. The amendment is withdrawn. Any other amendments?

SENATOR MACEDA. Mr. President.

THE PRESIDENT. ^{the} Gentleman from Ilocos Sur and Laguna.

SENATOR MACEDA. Before I propose the next amendment which

SENATOR PADILLA. Mr. President.

THE PRESIDENT. The gentleman from Pangasinan.

SENATOR PADILLA. First of all, I do not fully subscribe to a declaration of public policy in every bill or in a bill of this nature.

And while the distinguished Senate President Pro Tempore says that when we declare ^a ^{ation of} a public policy that is full justification of the exercise of police power so as to uphold its validity, I doubt the ~~full~~ correctness of that statement, because a simple statute may provide for public policy and yet, if it violates some constitutional provisions, the courts will not hesitate to declare it unconstitutional even with ^{an express} that statement of a public policy.

SENATOR ROY. Though

Senator Roy:

... So our jurisprudence is replete with decisions stating that even the courts cannot inquire on establish^{ed} public policy.

SENATOR PADILLA. Well, the courts may or may not inquire. Let us assume that ^{the courts} it will not inquire why Congress ^{inserted} put that phrase "public policy." But it certainly will inquire whether that particular statute is violative of any provision of the Constitution.

SENATOR ROY. Yes, Your Honor. I agree with Your Honor.

SENATOR PADILLA. So it is not ^{fully} ~~a full~~ proof that the bill will be upheld as a lawful or a valid exercise of the police power of the State.

SENATOR ROY. No. I agree with Your H^Unor on that statement.

SENATOR PADILLA. But, as I said, I have no objection to saying, "PUBLIC POLICY TO ENCOURAGE THE ACQUISITION OF REAL ESTATE FOR HOUSING PURPOSES." Because, Your Honor, the suggestion of the distinguished gentleman from Capiz, the Minority Floor Leader, although he says that it can be rephrased, by providing for equitable terms and conditions, well, that also is not fully satisfactory. Because, first of all, the law should not provide for the terms and conditions of a contract.

SENATOR ROY. That is precisely why we need this declaration of policy. We cannot. We will be interfering too much with the freedom of parties to contract, Your Honor. As Your Honor has well said, the Rental Law that was approved here may be unconstitutional. You may be right, Your Honor.

SENATOR PADILLA. Although I was the only one to share that opinion.

SENATOR ROY. I wish we declared a public policy in that bill. I don't remember now whether I was one of the authors of that bill and whether we have this declaration of public policy in that Rental Law which we have enacted here. It is really interfering with the freedom of parties to enter into a contract.

SENATOR PADILLA. There is a provision in the Civil Code regarding freedom of contract. The parties can stipulate, provided it is not against the law, on public order, ...

SENATOR ROY. Public moral.

SENATOR PADILLA. ... public moral or ...

SENATOR ROY. Public policy.

SENATOR PADILLA. ... public policy.

SENATOR ROY. Yes. That is why we have to state the public policy here. If it is onerous and oppressive, it is against public policy. The purpose here, Your Honor, is to have this statement of policy as perhaps the ultimate refuge of the parties in the event that there is some question about its doubtful constitutionality. That is all the purpose. I don't think there is anything wrong or, not to say, unconstitutional.

SENATOR PADILLA. Yes. But does Your Honor think it is wise to ^{declare} say that it is public policy to provide protection to buyers?

SENATOR ROY. Against onerous and oppressive conditions. We have to state

this. Otherwise, we will be ~~assisting~~^{siding} with one party. That is the purpose of this statement of public policy. It is only against onerous and oppressive conditions. It is for the courts to determine whether it is really onerous and oppressive. If it is onerous and oppressive, then the court, against the right of the parties to enter into contract freely, as guaranteed by the Constitution, can take refuge in this declaration of policy that it is against public policy. Your Honor has well cited the provisions of the law. It was not here ...

SENATOR PADILLA. Yes, to help Your Honor in favor of public policy.

SENATOR ROY. I wish Your Honor has finally agreed. It is only against onerous and oppressive conditions in the contract, Your Honor. Anyhow, the court will determine whether the conditions are onerous and oppressive. Otherwise, the courts will not interfere with the rights of the parties to enter into contract. *

SENATOR PADILLA. Your Honor, there are recognized causes for ^{the} ~~say~~ annulment of a contract and it is usually an actionable wrong. The courts have held that the law or even the courts will not act as guardian for a party who has made a contract that ^{had bargain in} ~~has~~ ^{which} proved later to be, say, harmful to the interest of one party. In other words, to have an equitable relief by the court ^s under the law, it must be an actionable wrong.

SENATOR ROY. Yes, Your Honor. Your Honor has well said that technically, any contract entered into voluntarily and freely between two parties is valid. And technically, any contractual obligations where the parties have agreed to the conditions is valid. Technically, yes, it is valid. But it does not mean that any contract against public morals or against public policy can be valid. It is there where the courts will interfere, that is why we have a general provision in the Constitution on the police power of the State, insofar as public interest is concerned, or a general welfare clause.

SENATOR PADILLA. Well, I respect Your Honor's view.

SENATOR ROY. But there must be a declaration of policy.

SENATOR PADILLA. There is no question that if a stipulation ^{of} a contract is against the law or is immoral, against public order or public policy, that ^{stipulation} that will not be upheld because that ^{would be} is an abuse of the freedom of contracts. But in a private contract between two parties, I doubt very much whether the police power can be invoked.

SENATOR ROY. I think, it can. In the same way that a contract entered

into between two parties voluntarily and freely, when against public morals, cannot be validated by the court. In the same way, also, when a contract is against public policy, it cannot be validated by the court, that is, if a public policy is declared. In other words, public morals and public policy are one and the same thing and the court will be guided by that statement of a public policy, not to say public morals, because public morals is something in the conscience of man and the Justices of the Supreme Court know what is moral and immoral. But a contract that is onerous and oppressive may be valid technically, although the court can interfere if it is against public policy. But we have no public policy in this regard. So, let us declare it now as a public policy to defend buyers of real estates on installment under onerous and oppressive conditions, Your Honor. And it will be the courts who will determine whether the conditions are onerous and oppressive in ruling on its constitutionality.

SENATOR PADILLA. Well, I have expressed my views and I yield to the better judgment of the distinguished gentleman.

SENATOR ROY. No, it is only a matter of degree of appraisal. Your Honor is also right in Your Honor's observation. Thank you, Your Honor.

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SENATOR ROXAS. Mr. President.

THE PRESIDENT. The gentleman from Capiz.

SENATOR ROXAS. Will the distinguished gentleman honor your humble servant with a few questions?

THE PRESIDENT. The gentleman from Tarlac is requested to honor the interpellation of the gentleman from Capiz.

SENATOR ROY. Willingly, Mr. President.

SENATOR ROXAS. Mr. President, merely for a point of clarification. I ~~just wish~~ ^{just wish} to ask the distinguished gentleman from Tarlac whether under this Section 2 it would be possible for the courts to declare a contract null and void under grounds other than those specified in this bill.

SENATOR ROY. I think so, Your Honor, if it is against public morals or public policy.

SENATOR ROXAS. Your Honor, my understanding of this bill is that we have precisely set within limits the onerous and oppressive conditions which shall not be allowed, as, for example, the cancellation of contract; as, ~~for example, the grace period~~

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~~Senator Roxas.~~

[Handwritten: For example, the cancellation of contracts; and, as for, example, the grace period; and, as for example, the repayment of]

whatever has been paid by the buyer. But I ask this question because, from the exchange of views between the distinguished gentleman and the gentleman from Pangasinan, the impression seems to have been created that the court may nullify or render null and void any contract on grounds other than those contained in this bill.

SENATOR ROY. It is precisely the purpose, Your Honor.

SENATOR ROXAS. Is that Your Honor's intention?

SENATOR ROY. Yes, Your Honor, because when we make mention of the words "onerous and oppressive conditions", we are giving the courts the right to appraise the conditions in the contract. In the present bill, they have only pointed out the common evil or the onerous provisions of some instalment payments of real estate contracts in respect to the confiscation of the amounts due and the rescission of the contracts.

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SENATOR ROXAS. Correct, Your Honor.

SENATOR ROY. That is only one of the many onerous and oppressive conditions in the contracts of real estate sales or instalments, Your Honor. I can mention some.

SENATOR ROXAS. Would it not be better for us to set down already in detail all of these onerous and oppressive conditions rather than leave them to the judgment and discretion of the courts?

SENATOR ROY. That would be hard, Your Honor. I wish we could do that.

SENATOR ROXAS. But we have not provided for any standards, Your Honor. One court may consider a particular contract as onerous, whereas another court may uphold this as valid and legal.

SENATOR ROY. Your Honor, we will leave that to the court to determine what is an oppressive and onerous contract.

SENATOR ROXAS. But, Your Honor, that would be encouraging tremendous lawsuits. I think that the very least we should do is provide some standards which can guide the courts. Otherwise, we will have a multiplicity of suits all over the country, with the court in

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Ilocos Norte having a particular standard as against that ⁱⁿ ~~from~~
Mindanao.

SENATOR ROY. Your Honor, let us take, for instance, this charge of penalty on collection in the form of an amount equal to, say, 10, 15, or 20 per cent for attorney's fees, once a case is brought to court for non-payment of installment when the buyer is in arrears. They have a contract to provide for five per cent, 10 per cent, some- times, 20 per cent *as attorney's fees.*

SENATOR ROXAS. Yes, but in that case, Your Honor....

SENATOR ROY. ~~But we~~ cannot provide that in the bill, ^{but we can} ~~except to~~ say that in no case shall the seller charge more than five per cent for attorney's fees. That we can provide here. Let us give it ^{some} ~~loose~~ way. Make it from five per cent to 10 per cent. But when the amount is perhaps more than 20 per cent or maybe 30 per cent, we do not know. And according to the gentlemen from Manila and Rizal, the contract is technically correct because it is a contract freely entered into by the parties.

SENATOR ROXAS. Well, Your Honor, I am not a practising attorney, so, I do not collect attorney's fees.

SENATOR ROY. This is a common provision in all these contracts to purchase real estate on instalment basis.

SENATOR ROXAS. Correct, Your Honor.

SENATOR ROY. One can be sued for non-payment of his attorney's fees, and he can be sued several times. The amount he is behind, ^{and payments} they can sue him right away. They do not even give him time to pay beyond the period specified in the contract. If he is ^{late} behind five or 10 days, they have the right to file a case after notifying ^{him} him. He pays, plus attorney's fees. ^{He pays attorney's fees everytime he is late in payment.} Again, he is behind, ~~he pays~~ ^{he pays} again attorney's fees.

SENATOR ROXAS. My only concern, Your Honor, is that, if that is the interpretation which the gentlemen from Tarlac wishes to ascribe to this particular section, we have not provided sufficient standards,

Your Honor.

We have not provided for that, Your Honor.
SENATOR ROY. Only that we have not, Your Honor, that is why.

SENATOR ROXAS. And by not providing sufficient standards, we are going to encourage a multiplicity of suits all over the country

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with various interpretations of what the words "generous and expressive"

mean. *And* I think, it is incumbent upon Congress at the very least

to provide certain standards which will guide our courts; *Without such* ~~because,~~

standards,
this ~~way~~ we are just opening the floodgates to extreme interpreta-
tions.

SENATOR ROY. No, Your Honor.

SENATOR ROXAS. So, I have asked that question, Mr. President,
because it is my considered opinion that if that is the interpreta-
tion sought to be given by the distinguished gentlemen from Tarlac,
perhaps, we should review the bill; and in another section, provide
some
~~some~~ sort of guide or standards.

SENATOR ROY. This is a bill to start with, Your Honor, on the problem of real estate transactions on installment payment.

SENATOR ROXAS. I think we are all agreed on that, Your Honor.

SENATOR ROY. Perhaps later on, we can improve the bill, but in the meantime we are solving a problem in which many buyers of real estate on installment have been victimized.

SENATOR ROXAS. Well, yes, Your Honor. I think that the whole membership of this Chamber is in agreement with the objective sought to be achieved by this bill. As I said, it is only a question of phraseology or perhaps of approach. But in this particular section, as I said, if we are to accept the interpretation sought to be given by the distinguished gentleman from Tarlac, then we may have committed ...

SENATOR ROY. Your Honor, we have to foresee these contingencies. We cannot envision the kind of onerous and oppressive conditions there can be in a contract of the nature involved in the present bill. After this bill is enacted into law, the sellers may reasonably increase the value of real estate on installment payment. There may be some other conditions to offset the possibility of what they call as their loss and invoke the provisions of this bill. There are many tricks in the game, Your Honor. Let us favorably act on these general provisions, the statement of policy, and leave it to the court to determine whether it

is onerous and oppressive.

SENATOR ROXAS. That is correct, Your Honor, although I was of the opinion that our primary purpose here is to protect the installment buyer.

SENATOR ROY. Yes, Your Honor, but at the same time we should not be too hard or too harsh on the sellers of real estate because they are necessarily a component of our society who help also in the promotion of the general welfare.

SENATOR ROXAS. Yes, Your Honor, but our primary objective is to protect the installment buyer. That is our primary objective in enacting this bill into law.

SENATOR ROY. Yes, Your Honor.

SENATOR ROXAS. And so in trying to achieve this objective, I think that Congress should determine what is the minimum degree of protection that should be accorded, and after having set this minimum degree of protection that should be accorded to the installment buyer, set a guideline, more or less, for the courts, to be guided.

SENATOR ROY. Well, in the present bill, Your Honor, we have attacked frontally the common evil in most, if not all, contracts of buying or selling real estate on installment. We have well provided for that, but there are other onerous and oppressive conditions which we may not be able to envision just now.

SENATOR ROXAS. Well, Mr. President, as I said I merely sought clarification on Section 2 and leave it to the consideration not only of the distinguished gentleman from Tarlac but also to the ~~consideration~~ of the distinguished sponsor, the gentleman from Ilocos Sur and Laguna.

Thank you, Mr. President.

SENATOR ROY. Thank you, Your Honor.

SENATOR SUMULONG. Mr. President.

THE PRESIDENT. The gentleman from Rizal, Senator Sumulong.

SENATOR SUMULONG. Will the distinguished gentleman from Tarlac yield to some questions?

THE PRESIDENT. He may do so if he pleases.

SENATOR ROY. Willingly, Mr. President.

SENATOR SUMULONG. I would like to pursue the interpellations made by the gentleman from Pangasinan and Manila and also by the distinguished Minority Floor Leader about the intention of Section 2 of this bill. All the time I have thought, based on the sponsorship speech of the gentleman from Ilocos Sur and Laguna, that the basis of this bill is the exercise of police power. In other words, I thought all the time that the provision in a contract for purchase of real estate on installment basis that failure to pay some installment payments shall cause the cancellation of the contract and automatic forfeiture of payments made, is within the freedom *to enter into or* of contract, but we thought that we should pass a bill like this in order to change those terms of the contract *and* ~~in order~~ to give relief to the installment buyer. Do I understand from Your Honor that you consider the provision that failure to pay installments shall cause the cancellation of the contract and bring about a forfeiture of payments made as contrary to public policy? Because if that is the case, it will alter completely the concept of this bill. In that case, the remedy should be for the

installment buyer to go to court and ask for annulment on the ground that the contract is against public policy.

SENATOR ROY. That is right, Your Honor.

SENATOR SUMILONG. Because, Your Honor, I think we are all agreed that there is such a principle as freedom ^{to enter into} of contracts.

SENATOR ROY. Yes, Your Honor. That is basic.

SENATOR SUMILONG. Everybody is free to enter into any contract.

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~~SENATOR ROY. That is right.~~

~~SENATOR SUMULONG. Because, Your Honor, I think we are all agreed that there is such a principle as freedom of contract...~~

~~SENATOR ROY. Yes, Your Honor.~~

~~SENATOR SUMULONG. ...that everybody is free to enter into any contract, provided that it is not against law, morals and public policy. So if the contract is against public policy, even without this bill the installment buyer can go to court and ask for annulment on the ground that it is against public policy. But I thought, Your Honor, that that provision about automatic forfeiture is within the freedom of contract. But still they are not satisfied.~~
^{we} We want to change ~~the~~ it by virtue of the exercise of the police power so as not to make it too difficult for the installment buyer.

By way of analogy, Your Honor, I remember that we passed the Land Reform Bill where we abolished this crop-sharing provision in rice tenancy contracts.

SENATOR ROY. That is right, Your Honor.

SENATOR SUMULONG. In that Land Reform Bill, we assumed that it is within the freedom of contract to provide for crop sharing. But in the exercise of police power, we decided to abolish that by statute.

SENATOR ROY. Your Honor, if I remember right, there is a

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more need for exercising the police power. You can just invoke the provision of the Civil Code that that is null and void and, therefore, you can go to courts and ask for annulment *of the contract.*

SENATOR ROY. Yes. But the Civil Code provides that if the contract is against public policy, it is not a contract. That is why we stated here that it is the public policy.

SENATOR SUMULONG. So, why should we discuss this bill, Your Honor?

SENATOR ROY. What's wrong about stating the public policy here? We always do that. For instance, in the old agricultural reform laws as far back as 1947 — I happened to be the author of the first 70-30 Law, Republic Act No. 34, the agricultural tenancy law, and the last agricultural reform laws. We always made it a point to declare that as a public policy.

SENATOR ROXAS. Mr. President.

THE PRESIDENT. The gentleman from Capiz.

SENATOR ROXAS. Merely for an orderly discussion of this particular section, I would just like to address a question to the distinguished sponsor, the Chairman of this Committee, with the permission of the distinguished gentleman from Tarlac.

THE PRESIDENT. The sponsor is requested to intervene.

SENATOR MACEDA. Gladly, Mr. President.

declaration of policy there -- the policy of the State to encourage ownership of agricultural lands for the poor. We have declared that policy.

SENATOR SUMULONG. I just cited that, Your Honor, as an instance where we invoke the exercise of police power, and I also thought that we are invoking the exercise of the police power in this bill. But when we now say that a provision in the contract that "failure to pay installments shall cause the cancellation and forfeiture of payments made" is against public policy, then we are no longer invoking the exercise of police power. We are just declaring that that is against public policy and, therefore, under the Civil Code this installment buyer can just go to court and ask for annulment.

SENATOR ROY. The distinguished gentleman from Pangasinan, an authority on Civil Law, has cited the provisions of the Civil Code but there was no mention of public policy. Though the Constitution has a provision on the police power of the State, the police power of the State is not mentioned in the Civil Code as an exception to the acts of the freedom of the parties to contract. That is why I said we are taking refuge under a declaration of policy for the exercise of the Supreme Court of police power and the general welfare clause. That, to me, seems to be the standard procedure on legislation resorted to. We cannot state here in the

bill that under the police power of the State contracts on real estate on installment shall be resolved in favor of the buyer.

But, to me, it is enough that we declare that as a public policy just so we can take refuge under the police power of the State.

That was my thinking, Your Honor, when I proposed this amendment.

Let us take, for instance, this real estate contract. I will not mention the parties here. For any case filed in the court, perhaps, on ejectment proceedings after failure to pay even, say, one installment, the buyer has to pay not less than ₱500. If it is taken to the municipal court, it is ₱1,000. To me, that is onerous, and yet this is legal because it is really entered into by the parties.

SENATOR SUMULONG. The point I should like to bring out, Your Honor, is this: If the contract is against public policy, then there is no need for exercising police power. I think that we exercise police power when we assume the contract to be valid, and yet we want to change the terms of the contract in order to promote the general welfare. That is the exercise of the police power as I understand it.

SENATOR ROY. Yes, Your Honor.

SENATOR SUMULONG. But when we say that a contract is invalid because it is against public policy, then there is no

SENATOR ROXAS. Mr. President, I would like to address this question to the distinguished Chairman of the Committee. And for purposes of clarification, I will restate the problem.

The distinguished gentleman from Tarlac has stated that under Section 2, it is possible for the courts to declare ^{any contract,} null and void and illegal, ^{any contract,} on grounds other than those provided for in this bill. Now, does the distinguished Chairman of the Committee concur with the interpretation of the distinguished gentleman from Tarlac?

SENATOR MACEDA. Well, to begin with, Mr. President, may I clarify from the gentleman from Tarlac whether that is his statement or interpretation? I don't believe so.

SENATOR ROXAS. Well, that is what the distinguished gentleman from Tarlac has stated in answer to a question that I posed.

SENATOR ROY. Mr. President.

THE PRESIDENT. The gentleman from Tarlac.

SENATOR ROY. Well, the distinguished sponsor is referring to the specific provisions of the law where the grounds for...

SENATOR ROXAS. No, no, Mr. President. My question is very simple -- and I addressed this already to the distinguished gentleman from Tarlac. Under Section 2, ~~is it~~ ^{is it} possible for our courts to declare as null and void, installment purchase contracts,

on grounds other than those contained in this bill? Your Honor answered Yes.

SENATOR ROY. Yes. When it is against public morals and public policy. For instance, the owner of the land says, "I will give you the land and you will pay cheap, but your daughter must have to stay with me and work with me." Well, that is against public morals -- and yet it can be in the contract.

SENATOR ROXAS. Precisely.

SENATOR ROY. It may be legal. As a matter of fact, technically it is really legal because it is entered into. Many contracts have been nullified on grounds against public morals and public policy.

SENATOR ROXAS. Yes. In other words, the answer of the distinguished gentleman from Tarlac is yes.

SENATOR ROY. Yes, Your Honor.

SENATOR ROXAS. Now, may I address this question to the distinguished Chairman of the Committee.

By virtue of the answer of the distinguished gentleman from Tarlac, is this the intention of the Committee?

SENATOR MACEDA. Mr. President, I think there is really no conflict between what the Minority Floor Leader is fearing might be the result of this interpretation and what the gentleman from Tarlac has stated. What the gentleman from Tarlac has stated is

something which is true with or without this bill, that is, that in the general provisions on contracts, any condition that is contrary to public morals or public policy is, of course, null and void.

Now, with regard to this statement here of ^{policy} ~~policy~~ where...

SENATOR ROXAS. Then, why pass this bill if...

SENATOR MACEDA. Well, because the question of automatic cancellation with forfeiture of payments is not, under the present law, contrary to public policy or public morals. ~~So I think there is really no difference of opinion. As the distinguished~~

SENATOR MACEDA. So, ~~where~~ I think there is really no difference of opinion. As the gentleman from Tarlac was explaining, if we put in the contract certain conditions acceptedly as against morals, then that is null and void, but in the case of this particular provision, until this law is passed then they are not contrary to morals, not contrary to public policy and they are legal.

SENATOR SUMULONG. But under Section 2, it seems that the intention is to declare that that provision about the cancellation of the contract due to failure to pay installments and forfeiture of payments made, is contrary to public policy.

SENATOR MACEDA. That is the implication of Section 2, I agree with Your Honor. But it does not necessarily mean that without this law, the condition is already contrary to public policy.

SENATOR SUMULONG. Then all we need is Section 2 and the rest is unnecessary. If it is already embodied, why —

SENATOR MACEDA. I would rather have it the other way around, Your Honor — keep the rest of the bill.

THE PRESIDENT. The sponsor of the amendment wants to be heard — the gentleman from Tarlac.

SENATOR ROY. It has been said here, Mr. President, that inasmuch as the Civil Code provides that the contract may be annulled if it is against public policy then there is no need therefore of mentioning here

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a statement of public policy. When the Civil Code provides that the contract must not be against public policy, we inquire: what is the public policy? It is like saying: the contract is against the law. That is the contract, but what is the law? Or that a contract that is against the Constitution is not valid, but what is the Constitution? Yes, it is not valid if it is against public policy. But what is the public policy? We have to declare the public policy, Your Honor. We cannot just point them to the Civil Code, but we should state what is the public policy. And it is Congress speaking, stating the public policy. And in many decisions which your humble servant has read, the court really inquires into the wisdom of that public policy. That is the purpose of the provisions of this law, Your Honor.

it has been said here that
Now, there is an inference or an insinuation that the provisions of the present bill may be unconstitutional. That is true, it may be unconstitutional because it interferes with the freedom of contract. I would not say that it will be unconstitutional; ^{but} it may be unconstitutional. As a matter of fact, the distinguished professor in Civil Law, Senator Padilla, has a serious doubt about the constitutionality of the Rental Law which we passed and I agreed with him. And I also believe that as this law may be unconstitutional, hence the need for a declaration of policy. So, I think we should not quarrel about this.

At this juncture, 8:14 p.m., the Senate President, Hon. Gil J. Puyat, relinquished the Chair to the Honorable Leonardo B. Perez.

SENATOR TAMANO. Mr. President.

THE PRESIDING OFFICER (SENATOR PEREZ). What is the pleasure of the gentleman from Lanao?

SENATOR TAMANO. Will the gentleman from Tarlac yield?

SENATOR ROY. Willingly, Your Honor.

SENATOR TAMANO. Mr. President, I agree that it is necessary to declare a public policy with respect to the encouragement in the acquisition of real estate for housing purposes so that we define also what we would consider as contrary to that public policy, and we define as contrary to public policy what otherwise would not, per se, be considered as against public policy. In other words, if we did not declare a public policy, then the consequences which we have outlined here would not follow. But I would also disagree with the distinguished gentleman from Tarlac when he says that by so declaring a public policy without defining what are the standards of this public policy we can strike out certain other conditions which were not specified here as being per se contrary to the public policy enunciated.

SENATOR ROY. Generally, Your Honor, a declaration of policy is couched in general terms, so we give plenty of room for the court of justice to give its interpretation, as in this case, of what is enercous and what is oppressive. We cannot state as a declaration of policy, guidelines or standards.

SENATOR TAMANO. Mr. President, we would like to rescue the distinguished Senate President Pro Tempore from the quagmire that results from his insistence that it is not necessary to lay down the standards of the so-called public policy.

SENATOR ROY. On the contrary, remove Section 2 and you will find this bill in a quagmire.

SENATOR TAMANO. No, Your Honor, please! I would not propose that we remove Section 2, but I would disagree with the interpretation that as a consequence of Section 2, provisions of contracts which are not covered by the details which we have specified in this bill, would also be struck down simply because the public policy is declared.

SENATOR ROY. Yes, that is for the court^{to} to determine, Your Honor, ~~that~~ In the case of this class of transaction which is for housing purposes, and which is a national problem involving people of our country, ^{we have} ~~in order~~ to give some sort of a general guideline for the Supreme Court in invoking public policy as a ground for declaring a law invalid. So, we only use the phrase: "onerous and oppressive conditions". It is up to the court to determine, Your Honor, what are onerous and oppressive conditions. We try to solve the problem by some provisions of the present bill. But those are not the only onerous conditions in a contract of this nature.

SENATOR TAMANO. On the contrary, Your Honor, I believe that we should keep Section 2. But at the same time, let us consider as the interpretation of the phrase "onerous and oppressive" the definition that we have made out in the other sections of this bill. In other words, we declare the policy. And then, the other specific provisions are what we consider as oppressive and onerous, which per se are not ^aoppressive and onerous, were it not for this declaration of policy.

SENATOR ROY. Yes, Your Honor, ^{we} ~~we~~ can do that.

SENATOR TAMANO. But not on other grounds.

SENATOR ROY. I admit, Your Honor, that there is here the implication that the proposed amendment in Section 2 presupposes that the evils sought to be cured in this bill are really onerous, like confiscation of the property or rescission of the contract upon non-payment. Those, to me, are onerous. Unless we declare as a policy that those are onerous provisions of the contract, this bill may be declared unconstitutional, Your Honor, because the parties entered ^{the contract} into ~~it~~ voluntarily and freely.

SENATOR TAMANO. Precisely, Your Honor.

SENATOR ROY. But because of a problem in housing in our country which to us has been a problem involving the general welfare, I think we are justified in declaring here a policy, in the same way that we have declared a policy when we provided in the law the share or participation of a landowner in the fruits of the soil,

because it involves the lives of the great mass of our people or the tillers of the soil. So, the declaration of public policy is really a declaration of the conscience --

SENATOR TAMANO. Your Honor, please!

SENATOR ROY. -- of Congress on matters which cannot be specified by mere legislation.

SENATOR TAMANO. Your Honor, please! I would agree that there could be some unforeseen conditions and instances which are not among those defined in specific details in Section 3 and in other sections of this bill --

SENATOR ROY. Yes, Your Honor.

SENATOR TAMANO. -- which could be struck down as oppressive and onerous, and, therefore, contrary to public policy. But that would be by virtue of the operation of the general rules of the Civil Code. But, precisely, as pointed out by the distinguished Minority Floor Leader...

~~Senator Tamano~~

~~M~~ But precisely, as pointed out by the distinguished Minority Floor Leader, as far as public policy with regard to the encouragement of acquisition of real estate for housing purposes is concerned, we have already defined here what are the so-called oppressive and onerous conditions which heretofore have not been oppressive and onerous per se.

SENATOR ROY. May I reply now, Your Honor. The constitutionality of the provisions^s of this law may be challenged because ~~it~~ ^{they} interfered^{ed} with the freedom^{of} the parties to enter into a contract. But with the declaration of public policy, the court may resolve in favor of the buyer. That was what I was thinking, Your Honor. The court may also declare or annul an agreement of this nature not only on the grounds stated here if it can be raised by the parties to the court. Aside from those specific instances which are covered by specific provisions of this bill, the court may still annul the contract if the court finds it as onerous and oppressive. That is the purpose of Section 2, Your Honor.

SENATOR TAMANO. Yes, Your Honor, please.

SENATOR ROY. But without this provision in Section 2, Your Honor, all the provisions here can be assailed on constitutional grounds. You believe me, Your Honor, because ~~it~~ ^{they} interfered with

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the freedom of the parties to enter into contract, in the same way that we have approved the Rental Bill. I think it is ^{now} being attacked in the Supreme Court on the grounds of being unconstitutional.

SENATOR TAMANO. We agree with you, Your Honor.

SENATOR ROY. Thank you, Your Honor.

SENATOR TAMANO. That there could be some other condition or instance which can be struck down by the courts as oppressive and onerous not by virtue of the provisions of this bill but in line with the general provisions of the Civil Code on contracts.

SENATOR ROY. Yes, it must not be against public policy.

SENATOR TAMANO. Public policy, law, morals.

SENATOR ROY. Yes, that is the public policy on housing. That is why we are stating the public policy here when it comes to housing, Your Honor. That was the point of your humble servant, Your Honor, take the case of a condition in a contract where you have to pay not less than one thousand pesos when the attorney of the seller goes to court to eject one from the premises. We can not provide here that he should not charge for attorneys fees not more than so much. We cannot because, otherwise, this would be a code. But I am satisfied, Your Honor, that this provision is a milestone in our legislation. It solves a problem which has caused sufferings and hardships to many people. You believe me, Your Honor.

SENATOR TAMANO. I agree, Your Honor, please.

SENATOR ROY. When I was practicing law about thirty years ago, as a struggling lawyer, most of the cases I handled are cases of this nature. So, I can not forget — they are still here in my mind, Your Honor — the sufferings of many installment buyers who, after paying two or three years or even four or five years, ~~they~~ lost everything.

SENATOR TAMANO. Your Honor, please. We agree, but what we are pointing out is that the courts are now provided with two weapons whereby it can strike down a contract on real estate, first, by provision of this bill because of the public policy that you have declared and the specific provision^s of this bill.

SENATOR ROY. That is right, Your Honor.

SENATOR TAMANO. And second, by virtue of the fact that we have declared a public policy and by operation of the general rules of the Civil Code.

SENATOR ROY. Yes. This will comply with the provisions of the Civil Code. It must not be against public policy. What is the public policy? Section 2. You see, Your Honor, they jibe.

SENATOR TAMANO. Precisely, Your Honor, please. But we are only trying to clarify *some points*.

SENATOR ROY. Unless we state a policy in the bill, ^{on housing} Your Honor,

can not invoke the Civil Code. It says there public policy. What is the public policy? Like saying: This contract is against the Constitution. What is the provision of the Constitution? A contract against the law is invalid. What is the law? Then the Civil Code says it must not be against public policy. What is public policy? Section 2 states the public policy, Your Honor.

SENATOR TAMANO. Your Honor please. On that point, I would disagree because even assuming that we do not have such a bill, but if there were a contract pertaining to real estate which would be considered as oppressive and contrary to public policy ...

SENATOR ROY. ^{No,} ~~Yes,~~ Your Honor.

SENATOR TAMANO. ... under the general provisions of the Civil Code ...

SENATOR ROY. Your Honor if it is a mere contract on real estate, this public policy does not apply. This is real estate on housing; these are not the installment payers for housing. That is why we have to specify here. We can not interfere in the freedom to contract and other real estate transactions. No. But this is a real estate transaction on installment payment which is for the purpose of housing. That is ~~that~~ public policy because housing still is a national problem, Your Honor.

SENATOR TAMANO. Your Honor, please. I think that even without ^{so} declaring specifically that there is a public policy to encourage the acquisition of real estate, I think this is also enunciated in other bills like the Homesite and Housing bill and other bills.

SENATOR ROY. That is true, Your Honor.

SENATOR TAMANO. For instance, the GSIS law...

SENATOR ROY. That is the policy of President Marcos but not the policy of Congress; and the policy of President Marcos is rarely complied with. Congress is declaring here a policy.

SUSPENSION OF THE SESSION

SENATOR MACEDA. Mr. President, may I ask for a one-minute suspension of the session?

THE PRESIDING OFFICER. Is there any objection? (Silence.)

There being none, the session is suspended.

It was 8:27 p.m.

RESUMPTION OF THE SESSION

At 8:29 p.m., the session was resumed with the Honorable Leonardo Perez, presiding.

THE PRESIDING OFFICER. The session is resumed.

SENATOR TOLENTINO. Mr. President.

THE PRESIDING OFFICER. The Majority Floor Leader.

SENATOR TOLENTINO. With the permission of the distinguished

sponsor...

SUSPENSION OF CONSIDERATION OF S. NO. 775

SENATOR TOLENTINO. Mr. President.

THE PRESIDING OFFICER. The Majority Floor Leader.

SENATOR TOLENTINO. With the permission of the distinguished sponsor and the other gentlemen on the floor, because of the importance of the points that have been discussed and there may be need of further discussions, I move that we suspend consideration of the bill until Monday.

THE PRESIDING OFFICER. Is there any objection? (Silence.)

There being none, the motion is approved.

VICE-
CHANGE OF/CHAIRMANSHIP OF COMMITTEE

SENATOR TOLENTINO. Mr. President, the distinguished gentleman from Pangasinan and Manila, Senator Padilla, has agreed to yield the vice-chairmanship of the Committee on Games, Amusements and Tourism to the distinguished gentleman from Lanao del Sur, Senator Tamano. I therefore move that the substitution be approved.

THE PRESIDING OFFICER. Is there any objection? (Silence.)

There being none, the motion is approved.

ADJOURNMENT OF THE SESSION

SENATOR TOLENTINO. Mr. President, I move that we adjourn until ten o'clock tomorrow morning.

THE PRESIDING OFFICER. Is there any objection? (Silence.)
There being none, the motion is approved and the session is 243

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adjourned until ten o'clock tomorrow morning.

It was 8:30 p.m.

BILL ON SECOND READING
S. No. 775 — PROTECTION FOR REAL ESTATE BUYERS
(Continuation)

SENATOR TOLENTINO. Madam President, I move that we now resume consideration of Senate Bill No. 775 being sponsored by the distinguished gentleman from Ilocos Sur and Laguna, Senator Maceda. I ask that he be recognized.

THE PRESIDING OFFICER. Resumption of consideration of Senate Bill No. 775 is now in order. The gentleman from Ilocos Sur and Laguna has the floor.

SENATOR MADEDA. Madam President, I believe that the secretariat has circulated a clean copy of the bill as it now stands and, at the last session, we were only then debating the matter of the declaration of policy clause. If the distinguished experts have come up to a consensus on Section 2 which, frankly speaking, at the moment I do not know about, maybe we could finally get this bill through tonight with the consent of the other Members of the Senate.

SENATOR TOLENTINO. Madam President.

THE PRESIDING OFFICER. The Majority Floor Leader.

SENATOR TOLENTINO. Madam President, I would like to beg the indulgence of the distinguished sponsor and the Chamber to allow me to make certain observations on the bill as it is now after

incorporating the amendments that have been approved, which may lead to further amendments.

THE PRESIDING OFFICER. The bill amended as of April 14.

SENATOR TOLENTINO. Yes, that is right. Madam President, the first thing I would like to point out on this draft now is that the scope of the statement of policy does not conform to the substantive provisions of the bill itself. It will be noted that Section 2, declaring the public policy to encourage the acquisition of real estate for housing purposes, is very specific -- for housing purposes -- while in Section 3, the bill says:

"In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominium apartments but excluding industrial lots, commercial buildings and sales to tenants" --

under the Agrarian Code.

The lack of coincidence is that while the policy is limited to housing, Section 3 is broad enough to include all other real estate except industrial lots, commercial buildings and lands under the Land Reform Code. Now, ~~I wonder which is actually intended by the bill. I am not proposing anything -- I just want to know what is really intended.~~

~~Senator Tolentino~~

Now I wonder which is actually intended in the bill. I am not proposing anything. I just want to know what is really intended -- a limited scope or a general scope as envisioned in Sec. 3.

Another point is that while we declare the policy to protect buyers of real estate on installment payments against onerous and oppressive conditions imposed in the bill, we do not make clear what would be the effect of violations of stipulations in a contract contrary to the provisions of Sec. 3 and Sec. 4, ^{and} Sec. 5 also. Because in the law of contracts, ordinarily, parties are free to stipulate; and if they do not stipulate on any matter contrary to what is provided in the law, then the law is considered as a part of the contract. On the other hand, if they stipulate contrary to what is stipulated in the law, then ^{there are} you have two possibilities: that the stipulation governs when the stipulation is not going to be declared as contrary to law or public order or public policy; but if that stipulation is to be considered as contrary to law or public policy, then it will be void. ^{It} Now these matters, I believe, are to be clarified so that there will be no doubt in the application of these very good provisions contained in this bill.

So I would like first to limit the question to the scope.

What do we intend to cover by this bill?

SENATOR MACEDA. Well, Your Honor, as far as the sponsor is concerned and as is already known in my original bill, there was no declaration of policy. The intention was principally to protect all installment buyers of real estate for residential purposes, principally of course, but not really exclusively of that nature; and I would, ^{prefer} if the gentleman from Tarlac, the Senate President Pro Tempore, agree to keep it in ^{its original} ~~a small general~~ form rather than to limit it to housing purposes which, after all, is a matter of intention as far as the buyer is concerned. ^H Generally, of course, small employes and low-paid workers buy this real estate for purposes of setting up their own residences or houses and not really for investment or for resale; but, as I said, it is really a matter of intention that is usually not pre-determined. So, as I said, to provide maximum protection to buyers who, after all, as stated by those who interpellated, the sellers usually have their lawyers and everything ^{going} good for them. They are properly protected and taken care of. As a general rule, we would like to protect all kinds of installment buyers as much as we can in the same way as the Civil Code already speaks of protection

of installment buyers of even personal property. They are already given certain protection in the Civil Code itself.

But I will be willing to consider any suggestion that the Majority Floor Leader would propose.

SENATOR TOLENTINO. I am really just going along with what the Committee would like to do as to the scope of this^{bill}. I think, basically, it is the distinguished President Pro Tempore of the Senate -- who has proposed Sec. 2 -- whom we should ask whether he would go along with the intention of the sponsor or insist on his amendment that^{it} would be limited to housing.
^

w/ corrections of Sen. Roy

SENATOR ROY. Madam President.

THE PRESIDING OFFICER (Sen. Benitez). The President Pro Tempore.

SENATOR ROY. With the permission of the distinguished sponsor, may I state some words, on the observation of the Majority Floor Leader?

THE PRESIDING OFFICER. The gentleman may proceed.

SENATOR ROY. It is true, Madam President, that in the proposed statement or declaration of public policy appearing in Section 2 in the final draft of the bill, we made mention only of the acquisition of the real estate for housing purposes. I repeat, acquisition of real property for housing purposes. Section 3 of the bill includes, on line ~~8~~ 9, residential condominium apartments which is really different from acquisition of real property for purposes of housing.

Madam President, the intention of your humble servant is merely to cover or to give protection against onerous and oppressive conditions of this transaction on real estate to persons who would like to put up their houses and this means referring to the middle class and poorer class of people. Strictly speaking, condominium apartments may not fall under the phrase "real estate for housing purposes".

My reason for not including those transactions on residential

condominium apartments is that the latter

~~Senator Aquino:~~

~~... which is to encourage the acquisition of real estate.~~ (You know, Your Honor, if you will take in the subdivision owner, firstly, he has to pay the land and, secondly, he ^{has} to secure a long term loan to develop that land. He has to put in a sewer system and light system. The whole property has to be subdivided and titled. Already his initial expenses are tremendous. Schedules will have to be met. The moment you impose this grace period and these conditions, he will have a hard time meeting his amortization, Your Honor. ^G And what happens here, only those with tremendous capital will therefore go ⁱⁿ to subdivision development and you will, therefore, limit the development of real estate in our country. In my point, the buyer knows exactly the condition: he must pay on due dates. If he defaults in payment, he knows that. He knows it will be cancelled. So, he has to make provision for that. ~~Now, if you tell me that he has gone for nine years and then you will say he will lose ~~it~~ and he knows that, it is up for him to find out when that will be due.~~

^S But, Your Honor, I really feel very strongly that if we will be very lax in this installment payment, subdivision owners will be the first to tell you that collection is one of the hardest. If they do not have those automatic clauses, the litigation will go on ^{for} years on end. They will be in courts and clog our courts. As I said, there are perennial renters of apartment. They go in and they make a down payment or an earnest money

for two months.

SENATOR MACEDA. Well, on that point, as Your Honor knows, that is not covered by the provisions of this bill.

Your Honor
 SENATOR AQUINO. Yes, But this is a situation where we are protecting the very culprits. After two months, they do not pay anymore. You give them one month grace period and then it takes six months to eject them. Finally, they go to you and say: "Tabla na iyong apat na buwan at aalis na kami." But they will have got already four months free. Now, in these particular instances, there are subdivision owners, as I said, that imposed very stringent rules, not only in the payment because payment is sometimes secondary, wherein some people really object. For example, when I bought a lot in North Forbes, automatically I found out that in my contract there were very onerous conditions, like, for example, I ~~cannot~~ ^{could not} build two dwellings on the lot that I ^{had} bought; that I ~~cannot~~ ^{could not} split this particular lot even though it ^{was} three thousand square meters; that I must pay P0.30 per square meter per year as an association fee; that I must build the house ten meters from the road; ^{that I could not} and, I ~~cannot~~ build the house more than nine meters high.

SENATOR MACEDA. Your Honor, may I clarify those points. Those points are not sought to be covered by this bill. Actually, the bill only covers ^{the} ~~two~~ usual provisions in present contracts, ^{namely,} ~~they are,~~ automatic forfeiture, loan notice, liquidated damages clause and the provision against advance payment of installments or payment of the full purchase price. With regard

to those other conditions, they are not meant to be covered by this bill.

As a matter of fact, however, I was made to understand that other members of this Chamber do intend to file a separate measure to look into all those other conditions. But as far as this bill ~~is~~ concerned, it only ~~is~~ involves the matter of defaults and the basic ^{notice.} As you ~~said~~, Your Honor ^{has said, he} agrees with the basic rights to notice. I think there is no disagreement on that point.

Your Honor.
SENATOR AQUINO. Yes, I think notice should be made.

SENATOR MACEDA. In this case, Your Honor, we are only, in effect, debating the question on the cash surrender value provision which is actually a derivation from insurance. And may I inform Your Honor, as I said, in the public hearing, the subdivision owners and the realtors did not object to this provision. Of course, they were asking for a lower rate. Their official position is for 25%, plus 5% every year. And of course, I realize that they would ask for a lower amount but I thought that 50% should be the basic rate after, at least, two years of installment payment. And considering, Your Honor -- and I think Your Honor knows -- that after they pay the 50% or more, they are actually going to get back a property which has already appreciated in value over the last five years, let us say. So, if they decide to cancel the contract and to refund the 50%, it is because they know that they will earn out of it. ^A As a matter of fact, most of those who appeared before the committee, the established realtors and subdivision

owners, say, as Your Honor has said, that usually they give more grace period than what is provided for in this bill. But it is also accepted that there are some unscrupulous ^{people who are coming in} concern that just for one month of non-payment, ^{the contract} it is cancelled and that everything ^{a lawyer} you have paid which ^{the} you have probably saved ^{with} from all the hardships during the years, are forfeited.

Now, sometimes we ^{cannot} say when this lowly paid earner or, ^{as I said,} the small buyer will have a death ^{or sickness} in the family, or there is a sickness in the family, the floating rate goes up, as Your Honor said, and the cost of living goes up, he has no time to adjust immediately and he defaults on his monthly installment. Now, it is on this occasion where precisely the law steps in to protect ^{them} ~~they~~ because, generally, even the realtors or the subdivision owners who have appeared before the committee admit that defaults are probably in the vicinity of five per cent. That is the figure given. ^{And} generally, especially the small buyers, if they can hold on to their lots, because probably it is one of their major aspiration ⁱⁿ life to own a house and lot in the long run, ^{and so} they try to hold on to the property as much as they can. So, I would like to think, Your Honor, with due consideration to the seller, as Your Honor has pointed out, who have ~~already~~ ^{already}, I think, sufficient legal, technical and other assistance that will protect them, as far as their interest is concerned, that Your Honor will agree with me that in reality the ~~and~~ small buyers are not really on the same footing as the big subdivision owners.

SENATOR AQUINO. Your Honor, may I seek a clarification on this particular point on line 16, which says: "To pay, without additional interest"? Additional interest is interpreted to mean interest on the principal or interest on the interest?

SENATOR MACEDA. Well, what is meant here, Your Honor, is that if there is a provision in the contract for interest on the principal, under existing contracts, once ^{a buyer} you default, ^{a fee} you still ^p have to pay interest on ^{his} your unpaid installment. And as clarified, the original provision was without interest. The word "additional" was inserted upon the amendment proposed by the distinguished gentleman from Pangasinan and Manila. The idea really is to give ^{him} them this grace period without having to pay much more. ^{A buyer is} They are already having a difficult time paying the principal and the contracted interest on the principal and so ^{he} they would be given a grace period not to pay additional interest for the default.

SENATOR AQUINO. May I just zero in on the question? Let us say, Your Honor, the principal payment is P100, the interest is P12 and so the total payment is P112 due on that particular month. He defaults. What do you mean by additional interest?

SENATOR MACEDA. That in addition to P112 no additional interest should be imposed. Sometimes there is another ^{percent} 12% on the P112 during the period of default.

SENATOR AQUINO. Well, during the period of default and we are talking

here of a grace period of one month for every year of payment. Let us say he has made five years' payment. That will be five months grace period.

SENATOR MACEDA. Yes, Your Honor.

SENATOR AQUINO. And should he decide to pay after five months, it will only be five months times P112.

SENATOR MACEDA. Yes, Your Honor.

SENATOR AQUINO. But no more interest on that particular product, let us say, P560.

SENATOR MACEDA. Yes, Your Honor. And that is why the provision was included to prevent abuse of it, that he has the right to exercise this only once every five years.

SENATOR AQUINO. On page 2, Your Honor, after five years of installments, there would be an additional five per cent every year. So that after nine years, after the fifth year or the fourteenth year, it would be ninety-five ~~it~~ should not exceed ninety per cent.

SENATOR MACEDA. Yes, Your Honor. The ninety per cent would mean that there have been thirteen years' payment made.

~~Senator Maceda~~

~~Comment made.~~

SENATOR AQUINO. Yes, a minimum of 13 years' payment.

SENATOR MACEDA. And to refund 90 per cent of the original purchase price up to...

SENATOR AQUINO. Including the interest paid or excluding the interest paid?

SENATOR MACEDA. On total payments made. If I may explain, Your Honor. In the beginning, during the public hearing, we accepted an amendment proposed by the subdivision owners that the refund should be less interest and less taxes paid. Of course, at that time, the original bill was ^{graduated with} 50 per cent, 60 per cent, 70 per cent, 80 per cent, ^{refunds} depending on the number of years paid.

During the second hearing, they came back and said that they would accept a straight rate of everything that is paid because it would be simpler for their accounting purposes. If they were to keep separate books all the time for all of these different components of the payments, it would be harder for them. So, they actually asked that it be a straight refund on total payments made.

SENATOR AQUINO. But, Your Honor, that is assuming that there

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was an appreciation in value. Suppose, there was no appreciation in value? Then, the particular person was able to use the property for 13 years for free. That would be the effect of this bill. He used the property for 13 years. At the end of the thirteenth year, he will be refunded completely his entire capital, plus all interests paid, plus all the taxes paid. Then, he used the property for 13 years for free.

SENATOR MACEDA. Well, that is theoretically possible, Your Honor, but it is accepted that the general rule--an almost absolute rule in real estate--is it increases in value every year.

SENATOR AQUINO. Well, that is true, Your Honor, in some instances. Let us say, I bought a lot in Bel-Air, and all of a sudden, they put a memorial park right beside my lot. My lot depreciates after 13 years. I will just default, and I will require a refund of 90 per cent of my money.

Before this memorial park was established, I thought, I had a good lot. Then, all of a sudden, they put the dead people beside my lot. Well, my property depreciates. At the end of the thirteenth year,

my property which was P100 per square meter at the time I bought it,

is now only P50.00 per square meter. But I will get a complete refund

of my 13 years' payment, plus interest, plus taxes. Suppose, a factory

was established with fumes. All of a sudden, my property depreciates.

Or, I bought a subdivision, and all of a sudden, they expanded the

runway where the noise is almost unbearable, and everybody decides

to leaving his property.

Now, these are instances that can occur, Your Honor.

SENATOR MACEDA. Well, these instances can occur, Your Honor.

Granting that you bought the lot at P100 per square meter at Forbes

Park, just for an example, or, as Your Honor said, ^{at} Bel Air. Well,

to begin with, I think, Bel Air started with P10 or P15 per square

meter. Your Honor now knows how much it costs. Even if one puts a

memorial park there or an industrial factory which is very unlikely,

considering the zoning ordinances and the like, the cost will not go

down below its original purchase value. Maybe, it will go down as far

as the initial appreciations are concerned; but, definitely, I do not

think the seller would lose his money, as Your Honor is trying to give

in his example.

SENATOR AQUINO. Your Honor, I am afraid we are legislating ^{on} rather very abnormal times, because the appreciation in real estate value in the Philippines is caused not really ^{by} ~~on~~ the appreciation of that particular value, but ^{by} ~~on~~ the depreciation of the money value. The Philippine peso is so depreciated that the land value seems to be going up. In areas where the money is stable, one will not find such appreciation as we are having here in this country. ^{And} ~~the~~ only thing I am trying to say is ^{that} when one is going to get a refund of 90 per cent of everything that he has paid, I think ^{it} ~~it~~ would rather be a very heavy burden.

However, a 90 per cent refund of all the principal payments, I think, is more reasonable, where the interest would have been considered as rent, ^{and} the tax payment would have been considered as actual costs. ^{And} ~~Therefore~~, a 90 per cent refund of all amortization payments as to principal may lie, Your Honor. ^{But} when one starts including the interests and all the taxes paid, I can see where a landowner will be willing if the appreciation has been tremendous as in the case of Bel

Air, San Antonio, and the other villages. But in the villages, let us say, of San Juan or of Quezon City, where progress has not been as much, it may work to the tremendous advantage of the poor seller.

SENATOR MACEDA. Your Honor, I hate to use this as an example, but I could send Your Honor a thick file of recent consumer protection legislation that was approved by the United States Congress. And the United States is supposed to be the most advanced country.

Of course, nationalistic as we are, we will automatically say that that does not necessarily apply to us, and it is true. But I am surprised by the tremendous amount of protection given to the consumer, and to the tremendous amount of restriction that is now being imposed on all types of sellers or vendors, things that we would consider only five years ago probably as unconstitutional, but they are accepted.

As I said, the trend now is that the consumer has to be given more and more protection. And, well, as Your Honor said, if this will effect in hardships for the seller, the presumption is that he can provide ~~enough~~ enough leeway, enough part of his overhead probably allocated for this. He can amortize this over all his transactions, so to speak; while the Real estate buyer who is a one-shot buyer, so

to speak, in which all his savings during all his whole lifetime go,
is not, really, in a position to protect himself.

SENATOR AQUINO. Your Honor, I have no quarrel as to the advertence
to consumer legislations in America. But, I think, we should caution
ourselves against following the trend in America. America is a very
advanced country, and, therefore, consumer protection, Your Honor, may
lie in an advanced country. But the moment we start bringing in all
of the legislations in America, we will never take off the ground. For
example, the pollution control in America will cause us as much as the
original plant. Now, if we start bringing in all of those legislations
to the Philippines, the industrial development in this country will ^{become} ~~have~~
~~been~~ so retarded by the safety devices and the anti-pollution legisla-
tion that we will bring in, that we will actually ^{slow down} retard our progress.

Another thing in America is they talk about safety devices in the
cars, like seat belts and all, which increase the initial cost of the
vehicle. Now, if we will bring in all of these protection measures
of the United States today to a developing economy, I ^{what will happen?} would suggest
very strongly that we must not adopt measures that are now adoptable
in America, because of her advanced degree of development, to a developing

country.

Mr. President, we might be bringing in legislations which should come in 20 years from today. The moment we do that now, we will never take off the ground. In fact, it has been said by "have-not" countries that they welcome pollution if it would mean economic and industrial development or employment for their people. *To go back to your point: if* ~~if~~ we are going to make it very stringent for sellers, it would retard instead of encourage subdivision development in this country.

Two things can happen. We can either retard in this development or jack up the initial cost of the seller to cover all contingencies which, I think, will defeat again the very purpose of our law because we would like to encourage our people to buy lots as much as possible. In the light of this due legislation, if I were a seller, I would now compute. Instead of charging \$50.00, I will now charge \$75.00. We are not putting a ceiling on these prices, and the poor low-cost buyer will now have to contend with all of this. Every day we put a legislation, all that the developer has to do is increase the cost. "All right, you want such controls, I will just jack up the cost." So, the ultimate victim is the buyer.

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We can say, for example, that subdivision owners should have 10 inches of concrete where a black-topped asphalt will do. Well, what can a subdivision owner do? He will have to comply. But the moment he complies with that, the cost of the subdivision is ~~sent~~ ^{to go} going up and the initial down payment becomes a very heavy burden.

I merely would like ~~to bring this thought up.~~

~~Senator Aquino~~

to bring this thought to Your Honor because I do believe that, first, there must be due notice and, second, there must be severe penalties for non-fulfillment of warranties. I believe that we should protect the buyers along that line. ^{9/6} But when we start going into the mechanics of collecting the installments, Mr. President, considering the record in our country, I would caution very carefully the proponents of the bill to the fact that we might be discouraging rather than encouraging subdivision development.

Thank you, Your Honor.

^{also}
SENATOR MACEDA. Thank you, Your Honor.

THE PRESIDING OFFICER. Are there any further interpellations on the amended version?

SENATOR TOLENTINO. Madam President.

THE PRESIDING OFFICER. The Majority Floor Leader.

SENATOR TOLENTINO. I was going to propose the amendment to Section 2. I would like to restate it. That the text of Section 2 be reworded so as to read as follows:

"IT IS HEREBY DECLARED A PUBLIC POLICY TO PROTECT BUYERS OF REAL ESTATE ON INSTALLMENT PAYMENTS AGAINST ONEROUS AND OPPRESSIVE CONDITIONS."

THE PRESIDING OFFICER. What does the sponsor say?

SENATOR MACEDA. I accept the amendment, Madam President.

THE PRESIDING OFFICER. Is there any objection? (Silence.)

There being none, the amendment is approved.

SENATOR TOLENTINO. If there are no other amendments on page 1, I would like to proceed to page 2.

THE PRESIDING OFFICER. The Chair thought that the gentleman had something to say on Section 3.

SENATOR TOLENTINO. No, Madam President. That will be okay now because we eliminated the limitation on housing on Section 2.

THE PRESIDING OFFICER. Are there any further amendments on page 1? (After a pause.) There being none, we shall now proceed to page 2.

The gentleman may now proceed.

SENATOR TOLENTINO. On page 2, line 22, just as a matter of form, make this paragraph a separate section: "SECTION 5" to be inserted before the word "Under". In other words, Madam President, this paragraph will be numbered as "SECTION 5."

THE PRESIDING OFFICER. What does the sponsor say?

SENATOR MACEDA. Accepted, Madam President.

THE PRESIDING OFFICER. ^{As there} Any objection? (Silence.) There being none, the amendment is approved.

SENATOR TOLENTINO. As a consequence of that, Madam President,

Section 5 on line 27 will now read "SECTION 6." Between lines 30 and 31 on page 2, insert a new Section 7 to read as follows:

"SECTION 7. ANY STIPULATION IN ANY CONTRACT HEREAFTER ENTERED INTO CONTRARY TO THE PROVISIONS OF SECTION THREE, FOUR, FIVE AND SIX SHALL BE NULL AND VOID."

THE PRESIDING OFFICER. What does the sponsor say?

SENATOR MACEDA. Accepted, Madam President.

THE PRESIDING OFFICER. ^{Is there} Any objection? (Silence.) There

being none, the amendment is approved.

SENATOR ROY. Madam President.

THE PRESIDING OFFICER. What is the pleasure of the gentleman from Tarlac?

SENATOR ROY. May I ask for the approval of the bill on second reading as amended.

SENATOR PADILLA. Madam President.

THE PRESIDING OFFICER. The gentleman from Pangasinan and Manila.

SENATOR PADILLA. I notice on page 2, Section 5 -- now Section 6 -- the following clause: "and to have such full payment of the purchase price annotated in the certificate of title covering the property." Now, if ^{has} there is already ^{been made} a full payment, there should ^{should be executed.} be the final execution of the deed of sale. What is this annotation ^{the reason for} of payment on the certificate of title?

Sen. Padilla's correction

SENATOR MACEDA. Madam President, I remember this was the proposal of the distinguished gentleman from Lanao del Sur.

SENATOR TOLENTINO. Madam President.

THE PRESIDING OFFICER. The Majority Floor Leader.

SENATOR TOLENTINO. May I make an observation. I think the reason for this amendment -- although I do not see how it can be really implemented or carried out -- I suppose the reason for this is the fact that in many cases of sales on installments, the property is mortgaged to a bank, and before they can issue or transfer the title to the buyer, it takes a long time. They have to pay the bank first a certain amount before the bank consents to the release of that lot from the mortgage. And so I think the intention of the distinguished gentleman from Lanao del Sur was to just have the protection that ^{the seller} ~~he~~ has already been fully paid. But since the title is in the hands of the mortgagee, it seems to me ^{it} that/is very difficult to actually implement this.

THE PRESIDING OFFICER. Will the sponsor please recall under what circumstances this amendment was accepted.

SENATOR MACEDA. Yes, Madam President. The distinguished Majority Floor Leader is correct. You will remember, the distinguished gentleman from Lanao del Sur was trying to expand the coverage of the bill to cover several other aspects, and this was one of the

two amendments, I believe, that we accepted because they have immediate relevance to this particular provision.

SENATOR PADILLA. Madam President.

THE PRESIDING OFFICER. The gentleman from Pangasinan.

SENATOR PADILLA. If this is the suggestion or amendment of the distinguished gentleman from Lanao del Sur, then I will respect that amendment. However, I want to reiterate my previous observation that I am against Section 5, now Section 6, because if the contract is a ^{sale} ~~contract~~ on installments, why are we going to give the buyer the unilateral right to pay in advance all the installments?

The vendor who has a subdivision or, maybe, several subdivisions, ^{might have} ~~has~~ apportioned his receivables for a certain ^{number} ~~length~~ of years, say, 15 or 20 years. ^{My question is,} ~~That is the correct.~~ Now, why shall we give the

buyer the right at his exclusive will, to pay in advance all the installments? ^{it would amount to a} ~~That is~~ the modification of the contract. Of course, if the seller agrees, well and good — but not a unilateral right granted to one of the contracting parties.

Now, Madam President, the fundamental meat or the real essence of this bill is to prevent one party — the seller or the vendor — to automatically and unilaterally cancel a contract of sale of immovable property or a contract to sell real estate based on alleged default ^{of the buyer to pay} in one or two of the installment payments. We are

against the unilateral exercise of what the vendor claims is his right which, I believe, under the Civil Code is not an absolute right. But under this bill, ^{as} ~~we are going too far~~ ^{it will} ~~we are going~~ to give the buyer a unilateral exercise of a right which is not recognized in the contract of sale on installments.

SENATOR ROY. Madam President.

THE PRESIDING OFFICER. The gentleman from Tarlac.

SENATOR ROY. Will the distinguished gentleman from Pangasinan yield to one or two questions?

THE PRESIDING OFFICER. The gentleman may yield if he so desires.

SENATOR PADILLA. Very gladly.

I am against the public policy in Section 2. (Laughter.)

SENATOR ROY. Well, Madam President, I think we have come to an agreement in respect to the statement of public policy. And it is because of our agreement on this public policy statement which can justify the provisions here in respect to payment in advance without additional interest. This is precisely the importance of the declaration of public policy here which can meet ^{some} any objection, such as this unilateral right of one of the parties to exercise the right to pay in advance the principal without being charged of the interest. Without the declaration of policy, I really doubt whether the buyer can have that unilateral right.

~~SENATOR ROY. ... unilateral right~~

SENATOR PADILLA. But, Your Honor, even with the declaration of policy
I ^{am afraid it} ~~think it~~ cannot be done ^{legally,} because ^{this provision would} ~~we are~~ impairing, modifying or changing
the stipulations of a contract.

SENATOR ROY. That is with respect to those contracts already entered
into before the passage of this law. It will really impair the obligations
of contracts. I agree with Your Honor on that point. But let us talk about
the economics of it, Your Honor. Does not Your Honor believe that it would
be advantageous to the seller of the land to be paid in advance for the
following reasons? We know that the value of money is being corroded
very fast. Before the floating rate, for instance, the value of money
is such that had the buyer paid ^{the} in full ^{the} amount, the seller would have
been benefited. Whereas, if he will continue paying in installments up
to, say, five or ten years ^{hence,} ~~until today~~ where the value of the peso is
going down or is being corroded gradually, we will therefore see that it
is more advantageous for the real estate owner or the seller to have the
installments paid in advance and in lump sum because the value of the peso,
by the law of economics, will go down and down until perhaps its equivalence
five years after, ^{now,} ~~like what happened,~~ will only be one-half of its buying
power at a certain time.

SENATOR PADILLA. Your Honor's observation is correct on the assumption
that our currency will continue to depreciate...

SENATOR ROY. I think it will continue, Your Honor.

SENATOR PADILLA. And that inflation will continue.

SENATOR ROY. It will, Your Honor.

SENATOR PADILLA. Now, on that assumption, yes, it may be advantageous to the seller because the interest in a subdivision lot may only be 10%.

SENATOR ROY. Yes, Your Honor.

SENATOR PADILLA. Whereas, if he ^{recovers} ~~gets~~ the money now, he can ^{invest} place it in the money market and ^{probably} earn 16%. That is true but we are not legislating on abnormal conditions. Now, I would like to think that after a few years our economic conditions, including the value of our currency, will not only stabilize but will be stronger.

SENATOR ROY. I hope.

SENATOR PADILLA. That is, if we stop deficit spending, if we improve our balance of trade payments. I agree, Your Honor, that if we are always ^{suffering} ~~in the~~ unfavorable balance in our trade, ^{if} we import more than we ^{can} export, ^{if} we use more dollars than what we can earn, and in the national or domestic ^{scene,} ~~side~~ we estimate our revenues and ~~we~~ spend maybe double than what we actually ^{as income,} realize thereby increasing our public debts, Your Honor is correct. Our economy will continue deteriorating and our currency will continue being ^{ing} reduced in its purchasing power.

But I would like to believe, Your Honor, that this situation can be corrected and will be corrected. I do not share the pessimism that our currency will continue being corroded. Now, on that assumption, Your Honor, that our currency will not continue deteriorating, would Your Honor still

believe that it is always advantageous for the vendor to receive the installment payments in advance? Now, the vendor may have his own time table ^{of investments}.

SENATOR ROY. We can understand, Your Honor, that the vendor is relying on these installment payments over a certain period of time and that he has already made a projection of his real estate investment. We realize that, Your Honor. But as I said, the tendency of the currency in any country of the world today is toward inflation. Now, let us face the facts. I would like to base my statement from the actualities of what is happening in our country today. The corrosion of the peso has been going on continuously for the last twenty years since we implemented the exchange control in December 1949, and this is true ^{of} in all currencies of the world.

Now, confining ourselves to the situation in our country, I would like to state here that the pattern of our balance of payment for the last ten years has been practically the same substantially. The balance of payment at best is on even keel. In most cases, the balance of payment is against us. The balance of payment up to now is \$250 million or more because our receipts in foreign exchange at best ~~is~~ are only equalled by our expenditures in foreign exchange. That is ^{an} established fact, Your Honor. ~~Those are the facts.~~ That is why we always have this problem of foreign exchange. That is why we still have control on foreign exchange, ~~the~~ not subject to licensing as what we ~~have~~ ^{had} since 1950 up to 1962 when the sale of foreign exchange ~~is~~ was subject to licensing. We no longer have licensing, but we still have foreign ^{controls} exchange because our balance of payment most of the time is against us. In other words, there has always been unfavorable balance of trade.

Only two days ago -- the other day -- Governor Llorens announced that the balance of payment for the last quarter period is \$19 million less.

SENATOR PADILLA. There was again a deficit, Your Honor.

SENATOR ROY. Yes, Your Honor. So, I would like to base my statement --

SENATOR PADILLA. Yes. But may I ask, Your Honor...

SENATOR ROY. -- on what has been happening in our economy in relation to our currency.

SENATOR PADILLA. Before you proceed on that ^{point,} Your Honor --

SENATOR ROY. One more point, Your Honor.

SENATOR PADILLA.--Your Honor said that the currencies of the world have been depreciating. But that is not exactly correct, ^{while there} because these are the countries whose currencies have been devalued or are devaluing, ^{other} but there are countries ^{which} that are revaluing. ^{We} have Japan now. ^{she} They want to revalue ^{her} their Yen.

SENATOR ROY. Yes, Your Honor.

SENATOR PADILLA. Other powers want ^{Japan} them to revalue even against ^{her} their will.

SENATOR ROY. Yes, Your Honor.

SENATOR PADILLA. Now, West Germany has a very strong currency. I think ^{she is} they are not suffering ^{any} a devaluation, on the contrary, because ^{her} their productive capacity ^{her earnings are} is more than their expenditures.

SENATOR ROY. Yes, that is true, Your Honor.

SENATOR PADILLA. Even the Canadian dollar or the Australian dollar, I understand, has a higher value than the American dollar. So, that means that the devaluation, you might say, of the American dollar has not really affected the Canadian or the Australian dollar because they have been able to maintain even a higher value.

SENATOR ROY. Yes, vis-a-vis the U.S. dollar. Your Honor is right there. The Japanese yen, the deutsche mark and the Australian dollar have to be revalued in relation to the currencies of the other countries of the world. Due to the inflationary trend in other countries of the world, they have to revalue their currencies because their currencies are stronger. But even in those countries which are revaluing their currencies in relation to the depreciated currencies of other countries, there is inflation. Prices are going up just the same. Even the cost of living in Germany — and especially in Tokyo — is high. There is inflation there. But they had to revalue their currencies because inflation ^{is} ~~was~~ worse in other countries. And, they had to give the true values of their currencies in relation to other currencies which have depreciated so much. Take the dollar for instance. There is so much dollars in continental Europe; so much dollars that they cannot use. And, they only need dollars to buy things outside or from the dollar area. But they don't need so much dollars. And that is why the cost of the dollar is going down in Europe — because, they have more dollars than they need; hence, they had to revalue their currencies in relation to the American dollar.

~~In the case of Japan, the Japanese have more than \$5 billion...~~

SENATOR PADILLA. How do we cover that? We issue more pesos in the money supply, or we issue bonds and borrow, increasing our public debt.

SENATOR ROY. That is right, we have inflation.

SENATOR PADILLA. This can be remedied, however. It can be remedied/~~in two~~ ^{two} ways. One is increasing our capacity to export and, perhaps, reducing our imports.

SENATOR ROY. Yes, Your Honor.

SENATOR PADILLA. And from the domestic point of view, increasing our income capacity through production and reducing excessive expenditures. The moment we balance these ^{factors,} or we even have more dollars as far as foreign trade is concerned, or less expenditures as far as our national income is concerned, then our currency will ^{improve and} stabilize.

SENATOR ROY. That is right, Your Honor.

SENATOR PADILLA. And our economy will also stabilize.

SENATOR ROY. That is axiomatic.

SENATOR PADILLA. So, it is not always true to say that the deteriorating condition of our economy and currency must continue to depreciate the peso or the purchasing power of the peso.

SENATOR ROY. It may continue, Your Honor, unless we change our fiscal policies.

exchange may be enough to finance our imports, to finance some invisible expenditures, such as expenses of our country in other countries. But when we inject into the money stream so much -- hundreds of millions, almost one billion as what happened two years ago -- then there is inflation, Your Honor. The balance of payment may be all right in our favor, but when we abuse the Central Bank, drawing as much as 800 to 900 million pesos, indeed, we add in circulation so much pesos, which gives rise to inflation and the high cost of living and of prices in our country.

SENATOR PADILLA. Well, Your Honor's explanation ^{just} agrees with my previous statement...

SENATOR ROY. In respect to the revaluation of other currencies. Your Honor is right.

SENATOR PADILLA. ... ^{or} ~~that~~ the currency from the foreign and domestic... Now, if we do not earn enough dollars than what we need for our imports, then we suffer a trade deficit in ^{our} balance of payments and that weakens our peso in relation to the foreign exchange.

SENATOR ROY. Yes, that is right, Your Honor.

SENATOR PADILLA. From the point of view of internal or domestic, if our revenues are so much, but our expenditures are one-and-a-half or double our revenues, then we also suffer deficit spending.

SENATOR ROY. That is right, Your Honor.

~~Senator Roy:~~

~~...to the American dollar.~~

In the case of Japan, the Japanese have more than five billion dollars. They have no use for all this amount because they buy from the United States ^{dollars} much less than the dollars which they have accumulated. Naturally, Your Honor, they have to revalue their Yen in relation to the dollar; but it does not mean that there is no inflation in Japan.

The inflation in Japan is terrific -- it is high. The cost of living is high. So, the revaluation of the currency of a ^{certain} country is only in relation to the currencies of other countries.

SENATOR PADILLA. I don't know, Your Honor,...

SENATOR ROY. May I also add this with the permission of Your Honor. The depreciation of our peso -- and this we have to admit -- is not only due to the paucity or insufficiency of foreign exchange which we need very badly in funding our national projects because we have to use dollars to buy ^{anything} outside our country, but it is also due to fiscal policies.

When our Administration spends so much money in pesos for national projects, we are putting out or adding into the money stream so many pesos when what we really need is dollars. Hence, the depreciation ^{of} our peso in relation to the dollar. In other words, this is not only due to lack of foreign exchange. The amount of foreign

SENATOR PADILLA. That is correct. If we do not change or correct the causes that are responsible for these consequences, well, the results will continue. But if we change, ^{if} we correct, if we improve, then the results also will improve towards the stability of our currency.

SENATOR ROY. It seems to me, Your Honor, it has almost become hopeless to improve.

SENATOR PADILLA. Hopeless.

SENATOR ROY. Yes, to improve the currency situation. Take, for instance, the present budget. I wonder whether Your Honor has made a cursory study of the Appropriations Act or of the budget.

SENATOR PADILLA. Not yet, Your Honor.

SENATOR ROY. Your Honor is in the Committee on Ways and Means. As Chairman, I think Your Honor has a tremendous task of raising the amount of P5.7 billion through taxation.

SENATOR PADILLA. Your Honor, there are several ways of raising revenues.

SENATOR ROY. Not borrowing.

SENATOR PADILLA. Yes, Your Honor. First, the usual and easiest way is to increase the rates and provide for new taxes -- that is the easiest way -- but it is not always good for the economy. Second, is to eliminate so many exemptions.

SENATOR ROY. I agree there, Your Honor.

SENATOR PADILLA. Where taxes and revenues are to be ^{paid} ~~paid~~ to the government, they are diverted through exemptions. And, sometimes, these exemptions only benefit private parties and BIR officials.

SENATOR ROY. And one effective way of curing inflation is to impose new taxes because the money collected is money in circulation. So, there can be no inflation. But what is going on, Your Honor, is that we, ^{violating} ~~in~~ substance, are ~~violating~~ the provision of the Central Bank Charter, Article 54, which says that no bonds or notes shall be issued by the Central Bank except in an amount not exceeding the assets of the Central Bank. There are still others. We cannot just create money. There must be assets to support it. But most of the assets of the Central Bank now, Your Honor, ~~is~~ P2.5 billion, backing up our currency are in the form of bonds, promisory notes, treasury notes in the Central Bank. So, we are creating money in substantial violation of the law because we are creating money through bond issues like what we did in 1953 up to 1960 -- we issued P1 billion -- and some of those bonds, Your Honor, still form part of the assets of the Central Bank. It is good we have not implemented the law authorizing the government to issue another P1 billion.

SENATOR PADILLA. And another point we should explore, which Your Honor mentioned as Chairman of the Committee on Ways and Means, is not always to...

SENATOR ROY. I am not the Chairman, Your Honor, of the Committee on Ways and Means.

SENATOR PADILLA. Yes, Your Honor.

SENATOR ROY. Your humble servant is not the chairman -- it is Your Honor.

SENATOR PADILLA. Tama iyon.

SENATOR ROY. Correction.

SENATOR PADILLA. As I was saying, another point to explore is not to always increase taxes because only the honest taxpayers suffer from that increase. Whereas if we broaden the base of taxation and make people who do not pay taxes, but should pay, that is a veritable source of income.

SENATOR ROY. That is true, Your Honor, if we can only collect the taxes due the government. I did not say, Your Honor, that I am in favor of new taxes or more taxes. I only stated that the best cure against inflation, to raise money if it is needed by the government, is to take it ~~from~~ in the form of taxes because the money taken as taxes is money taken from the money in circulation. We do not add new supply of money. But, as to whether to have new taxes or increased taxes is acceptable or is proper or advisable, I would not commit myself for the present, Your Honor. I would like to read first or go over those tax measures which Your Honor may sponsor on the floor later.

~~SENATOR PADILLA. Well, personally I am not very much in favor.~~

Senator Roy

may sponsor on the floor later.

SENATOR PADILLA. Well, personally I am not very much in favor of new taxes and higher taxes, but we may devise ways and means of not burdening the honest taxpayers and ^{paying} getting the persons who should pay ^{taxes} but do not pay. Because, Your Honor, if you ^{and} increase the rates, the person who has never filed a return is not bothered, because he ^{has} never ^{paid} from the very beginning anyway. That is a problem.

SENATOR ROY. Well, that is your work, Your Honor.

SENATOR PADILLA. Well, thank you for the enlightening dissertation on currency and taxes.

SENATOR ROY. Thank you, Your Honor. I have not disserted on currency. I have stated some facts about our currency. Your Honor may agree with me or not.

SENATOR MACEDA. Madam President.

THE PRESIDING OFFICER. The sponsor of the bill.

SENATOR MACEDA. I remember the Majority Floor Leader was proposing another amendment.

SENATOR TOLENTINO. I think the amendment was

THE PRESIDING OFFICER. We have accepted the amendment.

SENATOR TOLENTINO. Yes, it has been approved. And we have

to renumber 6 and 7 to become 8 and 9 respectively.

THE PRESIDING OFFICER. That is right. ^{Is there} Any other amend-
ment. [?] There was a motion from the President Pro Tempore.

SENATOR ROY. Is that approved already -- the enumeration?

There is another amendment, Your Honor.

it has limited the scope of the bill in respect to those conditions in the contract which would be declared null and void, and the amendment proposed by the Majority Floor Leader conforms to the provision of Sec. 2 which is the declaration of policy. It conforms to the provisions of Sec. 2 on onerous and oppressive conditions. So the amendment of the Majority Floor Leader conforms to Sec. 2, Your Honor. Without that amendment I hold the view that aside from those transactions covered in this bill, the Supreme Court may declare also other conditions in the contract as onerous and oppressive but my view was circumscribed and limited only to the provisions of this bill.

THE PRESIDING OFFICER. The Chair understands that the point of the gentleman from Pangasinan is only to change the words used in onerous and oppressive contracts. Does the author of this amendment who presumably is the President Pro Tempore, at least he is the one on record, want to accept this?

SENATOR PADILLA. Madam President, Sec. 3 provides that in case of default there should be a grace period and a surrender value. Sec. 4 is a case also of default, ^{for} ~~but there was~~ less than two years installment, again there is no right to cancellation. The new section introduced by the distinguished Majority Floor

Leader.....

THE PRESIDING OFFICER. The new Sec. 7.

SENATOR PADILLA.only provides in substance that any provision contrary to this section of the bill will be considered invalid because they are stipulations against provisions of the law. But this bill in essence, and even in form and in detail only, speak of cancellation, default, grace period which are provisions to prevent the automatic and unilateral cancellation and rescission of a contract ^{of} sale on installment. Or if a public policy section must be inserted, as it is in this bill, then it should be against automatic rescission or cancellation of the contract, not, in general, onerous and oppressive conditions. Even if this bill were to become a law, how can the Supreme Court, based on this bill or in this law, declare invalid certain other provisions of the contract not covered by this bill? The courts will not declare that. If there are iniquitous, unconscionable provisions, the court will either temper them or even declare them invalid not because of this bill but because of the Civil Code.

SENATOR ROY. On what ground? Against public policy or against public moral?

SENATOR PADILLA. In other words, the courts will temper any penalty clause because there is a specific provision in the Civil Code especially when there has been partial or irregular performance. Now, and a provision that is clearly iniquitous or unconscionable, that will be against public morals, ...

SENATOR ROY. Yes, *your Honor*

SENATOR PADILLA. ... against public order, public policy, even against the law. Therefore, the courts can declare it invalid. But the courts will declare ^{such a provision as} these ^{the provisions considered as} what we call here onerous, oppressive, iniquitous or unconscionable, ^{as} ~~the court will declare them invalid,~~ not because of this bill, ^{but based on principle} That is a basic provision of a rule in the Civil Code. So, ^{this bill} ~~what we are doing here~~ ^{only} is to regulate the relation between seller and buyer of lots on installments, and that is the ^{substance of the} old bill here ^{which} ~~and this~~ does not amend the Civil Code.

SENATOR ROY. We are not amending the Civil Code, Your Honor.

SENATOR PADILLA. Precisely, how can we say onerous and oppressive conditions in general, which are not even covered by the body of this bill.

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B

SENATOR ROY. Well, the amendment of the Majority Floor Leader somehow has limited the scope of public policy declaration in Section 2 though I feel that the Supreme Court may still declare null and void a contract for reasons not provided in the ...

SENATOR PADILLA. Those amendments are additional sections. They are additional sections. It has not changed Section 2 ^{which uses the} ~~if that is~~ ^{terms} onerous and oppressive.

SENATOR ROY. No, Your Honor, the section which we have approved, proposed by the Majority Floor Leader, categorically provides for declaring as null and void violations of those in Articles 3, 4, and 5, ~~it seems to me~~

SENATOR PADILLA. Well, I have expressed already my views, I think, several times ^{on} in this bill. So, I don't want to be repetitious and I respect the will of the majority.

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D

SPECIAL ORDERS

SENATOR TOLENTINO. Madam President.

THE PRESIDING OFFICER. The ^Majority Floor Leader.

SENATOR TOLENTINO. I move that we include in the Calendar of Special Orders Senate Bills Nos. 120, 469, 507, and 838.

THE PRESIDING OFFICER. Is there any objection? (Silence.)

There being none, the motion is approved.

ADJOURNMENT OF THE SESSION

SENATOR TOLENTINO. Madam President, I move that we adjourn until 4:00 o'clock tomorrow afternoon.

THE PRESIDING OFFICER. Is there any objection? (Silence.)

There being none, the session is adjourned until 4:00 o'clock tomorrow afternoon.

It was 8:45 P.M.

PS III-4 4/17/72 8:35 P.M.

C

SENATOR MACEDA. Madam President.

THE PRESIDING OFFICER. The sponsor of the measure, Senator
Maceda.

APPROVAL ON SECOND READING

SENATOR MACEDA. Madam President, if there are no further
amendments, I move for the approval of this bill on second reading
as amended.

THE PRESIDING OFFICER. We shall now vote on the bill on
second reading. As many as are in favor of the bill as
amended will please say Aye. (Several Senators: Aye.) As many as
are against will please say Nay. (Silence.) Senate Bill No. 775
as amended is approved on second reading.