

ANTONIO DOMENECH, PLAINTIFF AND APPELLEE, VS. ANASTASIO MONTES, DEFENDANT AND APPELLANT.

G.R. No. 1057. March 15, 1904

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The only question in this case is whether the plaintiff is entitled to recover the possession of a piece of land which was sold to him under an agreement to repurchase in the year 1892, the land not having been repurchased in the period of one year from the date of the contract, it having been stipulated that the lapse of this term without the exercise of the right to repurchase would convert the sale into an absolute and irrevocable conveyance. In his answer the defendant alleged that he had repaid the 168 pesos mentioned in the deed as the purchase price received by him.

In the decision of the court below we find the following finding: " The defendant has not paid to the plaintiff the sum of 168 pesos or any part thereof." This finding having been made, and there being no motion for a new one, for the purpose of this appeal we must assume that the purchase price was not returned and consequently that the right to demand the reconveyance was not exercised within the term stipulated.

This being so, the effect of the nonperformance of the subsequent condition attached to the sale, to wit, " but if the said period should expire without the exercise of the right of redemption, this sale shall become absolute," was to vest the fee absolutely in the plaintiff, and consequently he was entitled to recover his property, and such was the decision of the court below.

The judgment appealed is therefore affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Cooper, Willard, Mapa, and McDonough, JJ., concur.

Johnson, J., did not sit in this case.

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