

## THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. J. O. WAGNER ET AL., DEFENDANTS AND APPELLANTS.

*G.R. No. 30641. December 18, 1929*

Ponente: MALCOLM, J.

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### MALCOLM, J.:

There are two branches to the appeal in this case. As between the Government of the Philippine Islands and J. O. Wagner, Catherine Cleland Wagner, and J. J. Murphy, represented by counsel, the issue is the amount of the refund which the Government should make to the defendants as a condition to rescission of the contract of sale. As between the Government and J. O. Wagner and Catherine Cleland Wagner, represented by other counsel, the issue is the jurisdiction of the courts over the persons of these defendants.

1. In amplification of the preliminary introduction of the first branch of the case, it may be said that when this case was in the appellate court before ([1927], 49 Phil., 944), it was ordered that the record be remanded to the lower court "for the taking of testimony to determine the amount which the Government should refund to the defendants as a prerequisite to the rescission of the contract, and the cancellation of the patent and the title." In the body of the decision, the same thought was elucidated by this statement: "The Government, having asked for rescission, must restore to the defendants whatever it has received under the contract. It will only be just if, as a condition to rescission, the Government be required to refund to the defendants an amount equal to the purchase price, plus the sums expended by them in improving the land. (Civil Code, art. 1295.)" In compliance with the foregoing order and observations, a hearing was had in the Court of First Instance of Benguet. Both parties offered a number of witnesses. After the hearing, the court found that P1,200 had been expended by the defendants for improvements on lot 29-F of the Baguio town site, and that upon the payment of this sum, plus the amount of P960.60, the sale price of the lot, the contract of sale would be rescinded and the patent and certificate of title for lot 29-F cancelled.

As addressed to the judgment of the trial court naming a total of P2,160.60 as the amount to be paid by the Government as a prerequisite to rescission of the contract, three errors are assigned, viz.:

"1. The lower court erred in admitting contour map, Exhibit A, and all testimony based thereon.

"2. The lower court erred in not finding that the defendants had spent P19,000 for improving lot No. 29.

"3. The lower court erred in finding that but P1,200 had been expended for improving lot 29, and in ordering the rescission of the contract, and the cancellation of the patent certificate of title therefor."

Regarding the first error, the record discloses that the contour map, Exhibit A, was admitted without objection. Regarding the second and third errors which go to the merits, it is evident at a glance that the defendants cannot be allowed P19,000 for improving lot 29-F for otherwise this court would not have reached the decision it did formerly, and would not have found as it did find "that the defendants, as well as the intervenor, had failed to

construct improvements on the land of the value of P15,000." The conclusions of the trial judge, which make reasonable allowances in favor of the defendants, of 3,000 cubic meters of excavation and filling at 40 centavos per cubic meter are not at all unjust. Six hundred pesos for the plan for the proposed cinematograph building is not a proper item to be taken into account. A refund for taxes may not be allowed since not contemplated in our order, and since not coming within the purview of article 1295 of the Civil Code, However, having in mind the interest lost on the price paid and the expenses which the defendants have incurred, we are inclined to be somewhat more liberal than was the trial judge. Everything considered, we feel that a lump sum of P4,000 may fairly be substituted for the P2,160.60 named in the judgment of the trial court.

II. That this court has not seen fit to take up and decide at the outset of this decision the challenge to its jurisdiction and the jurisdiction of the trial court, discloses how little the long and complicated arguments of the intervenors have impressed the members of the court.

When these proceedings were initiated, service was made on J. J. Murphy as the owner of a one-half undivided interest in the property, and on J. J. Murphy as the attorney-in-fact for the Wagners, the owners of the remaining one-half interest. Counsel was engaged by Murphy, who represented the defendants both in the trial court and in this court without objection. It was only after the record had been returned to the trial court for the taking of further evidence that the jurisdiction of the court was impugned. The trial court overruled such objection, as likewise did this court, but subsequently we permitted counsel to intervene to elucidate his position.

At the time Murphy accepted service, he had in his possession the following power of attorney:

"Know all men by these presents, that we, J. O. Wagner and Catherine Cleland Wagner, husband and wife, citizens of the United States of America now residing at Baguio, sub-province of Benguet, Mountain Province, Philippine Islands, have made, constituted, and appointed, and by these presents do make, constitute, and appoint J. J. Murphy, of Baguio, sub-province of Benguet, Mountain Province, Philippine Islands, our true and lawful attorney for us and in our name, place and stead, to use, lease, sell and convey lot numbered twenty-nine (29) section F, in Baguio town site, sub-province of Benguet, Mountain Province, Philippine Islands, of which land Catherine Cleland Wagner is the recorded owner as demonstrated by official receipt numbered 792232 (seven hundred and ninety-two thousand two hundred and thirty-two) issued by the Director of Lands, on May 3d, 1913, said lot containing eight thousand and five (8,005) square meters, and for us and in our names to make, :seal, and deliver, and in any and every way and manner deal in the above-mentioned property.

"And in short our said attorney, J. J. Murphy, is given full and complete authority over this aforementioned lot to do as he may deem best. Giving and granting unto our said attorney full power and authority to do and perform all and every lawful act and thing whatever requisite and necessary to be done in and about the premises as fully to all intents and purposes as we might or could do if personally present hereby ratifying and confirming all that our said attorney shall lawfully do or cause to be done by virtue of these presents.

"In witness whereof, we have hereunto signed our names on this 14th day of May, A. D. nineteen hundred and seven-teen.

"Signed in the presence of:

(Sgd.) "JAMES A. WRIGHT

"FRANCISCO AQUINO

(Sgd.)"J. O. WAGNER

"CATHERINE CLELAND WAGNER"

"UNITED STATES OF AMERICA

"PHILIPPINE ISLANDS

"CITY OF BAGUIO

"At the municipality of Baguio, in the subprovince of Benguet, in the Mountain Province, on this 14th day of May, A. D. 1917, personally appeared J. O. Wagner and Catherine Cleland Wagner, known to me to be husband and wife and the same persons who executed the foregoing instrument, and acknowledged that the same is their free act and deed.

"J. O. Wagner exhibited cedula No. A-30072, issued at Baguio, P. I., on Jan. 6th, 1917.

"Before me.

(Sgd.) "PASCUAL PACIS

"Notario Piblico

"El nombramiento termina SI de die. 1917"

All that Wilbur S. Wilson and his counsel presented to offset the authority of Murphy was a cablegram said to have been sent by the Wagners to Wilson on July 25, 1928, and reading as follows:

"We authorize you take all legal means protect our interest lot 29-F, Baguio."

J. J. Murphy had, of course, the right to represent his one-half undivided interest in the land in dispute. He also had the right under the universal power of attorney to represent the Wagners. The intention of the parties, which, as in all written instruments should prevail, was to give Murphy the same power and authority to deal with the property which the Wagners might or could have had if personally present. The usual legal means were adopted to accomplish the object. The most effective way by which Murphy could preserve the ownership and possession of his principal's property was by accepting service and by defending the rights of the absent owners in the courts. Every act of Murphy was taken for the benefit of the Wagners. Attorney Mueller handled the case for the defendants as ably and conscientiously as any attorney could have done. (There can be noted 21 R. C. L., pp. 881-882; Lilian vs. Puno [1915], 31 Phil., 259; 11 Manresa, Codigo Civil, 1st ed., p. 455.)

The cablegram constitutes a very slight basis on which to claim a revocation by the principals of the power of attorney. Moreover, to set everything aside which has taken place would prove of no benefit to the parties.

The result is to rule against the attempted intervention by sustaining the jurisdiction of the courts, and on the merits to adhere to the appealed decision in its principal aspects.

In accordance with the foregoing, the intervention will be disallowed, and the judgment appealed from will be affirmed, with the modification that in lieu of the items of P1,200 and P960.60 mentioned in the judgment, P4,000 will be substituted. So ordered without special pronouncement as to costs in this instance.

Avanceña, C. J., Johnson, Ostrand, Johns, and Real, JJ., concur.

**STREET, J.:**

I vote to affirm.

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