

KAPISANAN BANAHAW, INC., PLAINTIFF AND APPELLANT, VS. JUAN DEJARME AND CANDIDA ALVERO, DEFENDANTS AND APPELLEES.*G.R. No. 32908. November 28, 1930*

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-32908/>**STREET, J.:**

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

This action was instituted in the Court of First Instance of Tayabas by Kapisanan Banahaw, Inc., for the purpose of obtaining the rescission of a lease contract executed on August 26, 1927, between the plaintiff, as lessor, and the defendants, Juan Dejarne and his wife, Candida Alvero, as lessees, as well as to recover possession of the land covered by the lease, with damages and costs. The cause having been heard upon the answer of the defendants and proof submitted by the respective parties, the trial court rendered judgment denying the petition for rescission and absolving the defendants from the complaint, with costs against the plaintiff. From this judgment the plaintiff appealed.

The plaintiff is an agricultural association incorporated under the laws of the Philippine Islands, with its principal office in Dolores, Tayabas, while the defendants, husband and wife, are residents of the same municipality. It appears that on or about August 10, 1925, the plaintiff sold to the defendants, upon conditional sale, a parcel of land, the same that is the subject of this action, for the sum of P16,000. Upon this contract the defendants paid apparently P3,000, but having failed to comply in all respects with the terms of the agreement, they were sued by the plaintiff in the Court of First Instance of Tayabas. This litigation was, however, compromised, and the action dismissed, upon surrender, by the defendants, of their rights under said contract. The parties to said litigation seem to have been forced into this compromise by a pressing need for money; and when, as a result of the compromise, the property had been returned to the control of the plaintiff, it was at once sold, with & larger tract of which it formed a part, to Nicanor Padilla upon contract of sale with facto de retro at three years, for the sum of P20,000. Under this contract the plaintiff, as seller, was permitted to continue in possession in the character of lessee for the period covered by the right of redemption. Having thus retained possession in the character of lessee, the Kapisanan Banahaw, Inc., in turn entered into a contract of sublease with the defendant Dejarne, whereby the same land that had been previously sold to the latter was returned to his possession in the character of lessee. This contract is dated August 26, 1927, but it was made retroactive to August 20, 1927. One of the features of this contract is that, after the lease should have been in force for one year, the lessee would have a right to buy the property outright for the sum of P18,666, payable in cash, with further stipulation that, upon availing himself of this privilege, Dejarne should pay to the seller an amount equivalent to the rent of the property for three months, such payment to be in addition to the stipulated rent due for the semester current at the time the purchase should be effected. With respect to the rent to be paid during the continuance of the lease it was stipulated that the

annual rent should be in the amount of P2,160 per annum, one half of which should be paid in advance within the first fifteen days of each six-months period (semester) during which the contract of lease was to run. It was further agreed that the sublessees should pay the taxes assessed against the land during the period of the lease, said taxes to be paid in the name of the Kapisanan Banahaw, Inc., and official receipts for such payment to be delivered to it. Another stipulation was to the effect that the sublessees would take care of the rented property as if it were their own and that they would not gather immature coconuts from the property. Finally, it was declared:

"(d) If any condition of this sublease be not fulfilled, the right or option to purchase heretofore granted the sublessees, the Dejarmes, together with this contract of sublease, shall at once be revoked, annulled, and cancelled, and the possession of the property restored; provided that if, notwithstanding such breach of contract, the lessees should continue in possession, with or without the consent of the Kapisanan Banahaw, Inc., such action shall in no way be construed as an extension or novation of the option or right to purchase, which, it is hereby covenanted and agreed, shall be, ipso facto, cancelled, annulled, and rendered of no effect."

With respect to this provision it need only be observed that it is a mere reminder of the right, recognized in articles 1124 and 1291 (5) of the Civil Code, of resolving or rescinding a contract for failure to comply with its stipulations. The provision quoted does not extend in any degree the remedies conferred by law.

It will be observed that under the contract the half yearly payments of rent were to be paid in advance within the first fifteen days of each semester, and the major point of controversy in this case is as to the date when the semesters begin. With respect to this question the following facts are pertinent: In fixing the price at which Dejarme was to be permitted to buy the property after the first year of the lease should have elapsed, the contracting parties took as a basis an estimate contained in a letter of Dejarme addressed to the president of Kapisanan Banahaw, Inc., under date of August 6, 1927. In this estimate there appears an item representing interest from August 1 to August 31, 1927, amounting to P140.13. Now this item was included in the price fixed for the purchase of the property; and the trial court correctly held that, after the lease was signed, no rent could be collected for the last eleven days of the current month, August 21 to 31, inclusive. It results that for the purpose of estimating the rental periods the first semester should be taken as beginning on September 1 of each year covered by the lease and running to February 28 of the next year.

Now it is admitted that the rent for the first semester (September 1, 1927 to February 28, 1928) has been paid; and it is proved that the rent for the second semester (March 1 to August 31, 1928) was paid on March 1, 1928. as per receipt Exhibit 1. Furthermore, the rent for the third semester was paid on September 16, 1928, as per Exhibit 2, and although this last receipt recites that the semester for which payment was made covered the period from February 20 to August 20, 1928, this statement is doubtless a mistake, in view of the fact that Dejarme had previously accounted for the rent for the period covering the fractional part of August, 1927, as already shown. In this connection it will be noted that this last payment was made eleven days late, if the plaintiff's theory of the date from which rent should be counted is correct, while it was paid only one day late, if the defendants' theory as to the date when payment was due is accepted.

With respect to the payment which should have been made, within the first fifteen days of March, 1929, for the rent of the fourth semester, we find that on March 10 Dejarme was officially informed by the Kapisanan Banahaw, Inc., that the period for the payment of said rent had lapsed and that payment of the rent would not be received. The position thus assumed by the plaintiff was based on the assumption that the period covered by this installment ran from February 20 to August 20, 1929. As we have already shown this contention is untenable. Of course no valid tender of the rent was made by Dejarme in cash on March 10, but the making of such tender was excused when the plaintiff peremptorily informed the defendant that payment would not be received. A debtor does not incur in default by failing to make a fruitless tender after notification from the creditor that the money

will not be received.

Our conclusion is that Dejarne has never been in default for the non-payment of the fourth installment of rent, and the contract cannot be resolved or rescinded on account of such supposed default. Furthermore, we entertain no doubt that the institution of this lawsuit was a mere act of reprisal against Dejarne arising from his refusal to submit to an extortion of an additional amount over what was actually due upon the stipulated rent. In this connection, Dejarne stated that upon making payment of the prior installments he had paid an additional sum of P450 which was never included in the receipts. The true inwardness of this transaction is revealed when the fact is noted that the rent charged against Dejarne under this contract was estimated upon the basis of about 12 per centum per annum on the purchase price of the place and the additional amount paid but not noted in the receipts amounted to about 5 per centum of the same amount. Dejarne says that he had been submitting to this charge on this representation made by the plaintiff that it was paying 17 per cent to Padilla, but in course of time he found that this[^] representation was false, and that in fact the plaintiff was making him carry the whole load of the indebtedness to Padilla and that, in addition thereto, the plaintiff was actually making a profit by charging Dejarne an excess over his portion of the debt to Padilla. Upon reflecting on this situation Dejarne decided to discontinue this additional payment, which was in effect nothing more than a concealed usurious charge of an extra five per centum on the purchase price of the place. We consider this explanation made by Dejarne as being probably true, and although it does not materially change the legal aspects of the case, it shows the motive behind the refusal of the plaintiff to grant a trivial extension of time for the payment of the fourth installment of rent, supposing Dejarne actually to have been in default.

And even supposing that this installment of the rent may in fact have been due on March 5, 1929, as the plaintiff's officers contend, we are nevertheless of the opinion that, under the circumstances of this case, such default would not justify the resolution or rescission of the contract. Under the third paragraph of article 1124 of the Civil Code, the court is given a discretionary power to allow a period within which a person in default may be permitted to perform the stipulation upon which the claim for resolution of the contract is based. In other words, the right to resolve or rescind a contract is not absolute (*Ocejo, Perez & Co. vs. International Banking Corporation*, 37 Phil., 631) ; and this discretionary power on the part of the court should be exercised without hesitation in a case where a virtual forfeiture of valuable rights is sought to be enforced as an act of mere reprisal for a refusal of the debtor to submit to a usurious charge. Moreover, as was said by this court in *Song Fo & Co. vs. Hawaiian-Philippine Co.* (47 Phil., 821, 827), the general rule is that rescission will not be permitted for a slight or casual breach of a contract, but only for such breaches as are so substantial and fundamental as to defeat the object of the parties in making the agreement. In that case it was held that a delay in the payment of a small quantity of molasses for some twenty days was not such a violation of an essential condition of the contract as warranted rescission for non-performance.

The foregoing discussion covers the most vital feature of the case; but error is assigned by the appellant to the failure of the trial court to declare the contract rescinded for the alleged default of Dejarne in not paying taxes on the property during the period covered by the lease, as well as for certain abuses alleged to have been committed by him in taking immature coconuts from the trees on the leased property. The discussion contained in the appealed decision sufficiently answers these contentions, and our conclusion is that no error prejudicial to the plaintiff was committed in the decision of the trial court.

In conclusion we observe that if we had found that Dejarne was really in default, it would have been proper for the court to fix a term within which he should be required to pay the rent due from him under the contract, but since the making of a tender on the date when the money was due was excused in consequence of the attitude of the plaintiff, no such order is necessary, and the duty to pay must be revived by proper demand hereafter made

upon Dejarne by the plaintiff,

The judgment will therefore be affirmed, and it is so ordered, with costs against the appellant.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Johns, Romualdez and Villa-Real, JJ., concur.

Johns, J., dissents.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.