

THE BACHRACH MOTOR CO., INC., PETITIONER, VS. MARIANO A. ALBERT, JUDGE OF BRANCH AB OF THE COURT OF FIRST INSTANCE OF MANILA, ISABEL ABLAZA, AND PEDRO VALDEZ LIONGSON, RESPONDENTS.

G. R. No. 42142. August 09, 1934

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-42142/>

MALCOLM, J.:

The facts which have induced the presentation of this petition for a writ of certiorari addressed to the Court of First Instance of Manila not being in dispute, the legal question arising out of the admitted facts is only to be decided, concerns the interpretation which should be given to the last sentence of section 267 found in the portion of the Code of Civil Procedure relating to manual delivery of personal property, reading: "If a return of the property be not so required within five days after the taking service of notice to the defendant, it must be delivered to the plaintiff, except as provided in section two hundred seventy."

Isabel Ablaza Pedro Valdez Liongson executed promissory notes', chattel mortgages on autocalesas, in favor of the Bachrach Motor Company, Inc. An action for the foreclosure of the chattel mortgages was begun. In aid of the-foreclosure proceeding, the plaintiff in that case filed an action for the delivery of personal property presented a bond in order to obtain possession of the autocalesas. The sheriff of Manila, after taking over the control of the chattels, gave notice to the defendants to file a bond for the return of the property if they desired to retain it. Within the five-day period the defendants failed to file any bond. Upon such failure the sheriff of Manila delivered the chattels to the plaintiff. Five days later the defendants filed an urgent motion in which they asked the court to approve a bond in the sum of ^6,000 for the return to them of the replevied chattels. After hearing the trial judge granted the petition on the theory that he had general jurisdiction, that there was nothing in the law which prohibited him to take action.

Section 267 of our Code of Civil Procedure was derived from section 514 of the Code of Civil Procedure of California. In turn, the California codal provision was based on the Practice Act of New York, except that instead of using the word "shall" before the words "be delivered", the word "must" was used. The emphatic, taxative, mandatory nature of the language is accordingly evident. The New York Court has held that, where seller, for default in payments on a machine sold on an installment contract secured by a chattel mortgage, replevied the machine, the buyer, not having given the statutory bond reclaimed the chattel, nor having deemed the return thereof, has, as a matter of law, conceded seller's right to possession. (*O. B. Brush Corp. vs. Weiner Bookbinding Co.* [1922], 198 N. Y. S., 566.) The California Court has held that the right of a defendant in a claim delivery action to require the return to him of property taken from him by the sheriff is conditioned upon his giving to the sheriff an undertaking as provided by section 514, Code of Civil Procedure. (*Bailey vs. Baker* [1915], 153 Pac, 242.) A Pennsylvania Court has held that the bond must be filed within the time prescribed. (*Lunneman vs. Lunneman*, 11 Pa. Dist, 759.)

Aside from the intendment to be deduced from the language used by the Legislature aside from the authorities, it is readily apparent that for one to avail himself of the privilege of retaining the possession of property, compliance with the conditions precedent imposed is necessary, failure to comply therewith entitles plaintiff to possession. The initial steps in obtaining redelivery must be taken within the time limited by the statute. In this connection it should be recalled that the autocalesas had passed out of the possession of the defendants out of the control of the court into the possession of the plaintiff because of the failure of the defendants to file the necessary bond in time.

The parties have discussed other phases of the case, particularly the effect of Act No. 4122 which introduced by way of amendment article 1454-A into the Civil Code. We think, however, that any pronouncements on these questions would be beyond the issue. The controlling factor is that the trial judge acted in excess of jurisdiction in attempting to approve a bond for the redelivery of the chattels presented after the statutory period had expired.

Petition granted, the costs to be paid by the respondents Isabel Ablaza Pedro Valdez Liongson.

Villa-Real, Imperial, Butte, Goddard, JJ., concur.

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.