

**MARGARITA VILLANUEVA, AS JUDICIAL ADMINISTRATRIX OF THE
DECEASED LORENZO VILLANUEVA, PLAINTIFF AND APPELLANT, VS.
JUAN SANTOS, DEFENDANT AND APPELLEE.**

G.R. No. 45625. April 28, 1939

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This appeal was taken by the plaintiff from the order of the Court of First Instance of Bulacan, holding that the consignment made by said plaintiff was invalid and that the sale with the right of repurchase of the parcels of land in litigation was final, and ordering her to yield possession thereof to the defendant within ten days from receipt of notice of the said order.

The plaintiff, as judicial administratrix of the deceased Lorenzo Villanueva, commenced in the Court of First Instance of Bulacan civil case No. 5249 against the defendant to annul the deed of sale with the right of repurchase of two parcels of land executed by the said Lorenzo "Villanueva while living in favor of the defendant. The following decision was rendered in the said case:

"When this case was called for trial, the parties through their respective attorneys submitted the following stipulation for the decision of the court:

"Both parties, assisted by their respective attorneys, agree that the plaintiff shall pay on December 4, 1936, to the defendant to repurchase the two parcels of land described in the complaint, the sum of three hundred fifty-nine pesos and sixty centavos (P359.60), with legal interest thereon from January 8, 1934 until the said date, December 4, 1936; and that should she fail to pay the said sum of P359.60, or a part thereof, or the interest thereon, wholly or partially, then the sale with the right of repurchase of said parcels, as they appear in the deed of sale Exhibit A of the complaint, shall be deemed final; and that the plaintiff shall deliver the possession of said parcels.

" "They likewise agree that should the plaintiff pay the aforesaid sums within the stipulated period, the expenses for the execution of the corresponding deed and the transfer of certificates shall be defrayed by the plaintiff.

" "They also agree that the plaintiff shall on this very date ask the authority of the court to enter into this stipulation in the intestate of the deceased Lorenzo Villanueva; and to render a decision in accordance therewith.'

"Wherefore, the court approves this stipulation and orders the parties to observe and comply strictly with the conditions thereof, without pronouncement as to the costs. So ordered.

"Malolos, Bulacan, today November 5, 1936.

(Sgd.) "PEDRO MA. SISON

"Judge" (B. E., p. 7.)

On the night of December 4, 1936, the date of the expiration of the period granted to the plaintiff to pay the repurchase price, the latter offered to the defendant the check No. D-8695 for P421.04, issued by Ramon Meneses against the Bank of the Philippine Islands in payment of the repurchase price. As the defendant refused to accept the check on the allegation that the payment should be made in money or legal tender, the plaintiff, through counsel, deposited the check with the clerk of court who received the same, and at the same time put in a motion asking that the payment be deemed effected and the two parcels of land redeemed, and, further, that the defendant be ordered to pay her the sum of P120 as damages. After hearing the motion, the court on April 30, 1937, issued the aforementioned order from which the plaintiff appealed.

In her sole assigned error the plaintiff contends that the court erred in holding that the consignation of the check with the clerk of court was invalid and that it did not have the effect of paying her obligation. The court correctly held that the consignation was unavailing and that it did not produce any legal effect because the defendant did not accept it and it was not in the form of money or legal tender. Article 1170 of the Civil Code provides that payment of debts of money shall be made in the specie stipulated and, should it not be possible to deliver such specie, in silver or gold coin legally current; and provides, further, that the delivery of promissory notes payable to order, or drafts or other commercial paper, shall produce the effects of payment only when realized or when, by the fault of the creditor, the privileges inherent in their negotiable character have been lost. Under this legal provision the defendant was not under a duty to accept the check because it is known that it does not constitute legal tender, and the consignation having been refused, it did not produce any legal effect and could not be considered as payment made by the plaintiff of the repurchase price. In *Belisario vs. Natividad* ([1934], 60 Phil., 156), it was held that a creditor is not bound to accept a check in satisfaction of his demand, because a check, even if good when offered, does not meet the requirements of a legal tender.

The defendant, in turn, alleges that the court erred in concluding that he testified that the plaintiff's indebtedness was P421.04, and in not holding that the consignation was invalid because the plaintiff's debt was P422.29 and the check only amounted to P421.04. These assigned errors can neither be considered nor passed upon for the simple reason that the defendant did not appeal from any part of the court's order.

In view of the foregoing, the appealed order is affirmed, with the costs of this instance to the plaintiff-appellant. So ordered.

Avanceña, C. J., Villa-Real, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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