

MANUEL GUEVARA, PLAINTIFF AND APPELLANT, VS. CARMEN DE PASCUAL ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 4679. December 22, 1908*

Ponente: WILLARD, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4679/>**WILLARD, J.:**

On the 20th of November, 1906, the plaintiff sold to the defendant, Carmen de Pascual, who made the purchase with the consent of her husband, C. R. Duffin, the "New Coin Cafe," a bar or drinking saloon situated in the city of Manila. By the terms of the contract the purchaser agreed to pay the owner of the property where the bar was located the sum of P1,200 in monthly installments of P100 each, rent due for the occupation of the building; to pay a debt due from the seller to Macke, Chandler & Co. amounting to P112, and to pay to the plaintiff P600 on the 28th of February, 1907, and P588 on the 28th of February, 1908. The contract contained also the following conditions:

"IV. That both contracting parties bind themselves to a strict compliance with the present contract, which, in case of nonfulfillment of any of its clauses by either of the parties, shall be rescinded.

"V. That in case the purchaser, Carmen de Pascual de Duffin, should infringe any of the clauses or provisions of this contract, the same shall be rescinded in accordance with the preceding clause, and said purchaser will immediately return to the vendor the bar with all its appurtenances, furniture and any other improvements made therein, without the right, on the part of the said purchaser, to any remuneration for such improvements."

The purchaser took possession of the bar but did not pay the rent due in the month of December nor did she pay the whole of the sum due the defendants Macke, Chandler & Co. She became the debtor of Macke, Chandler & Co. for other merchandise sold to her by them; on the 8th of January they commenced an action against her to recover the amount due them and on the 9th of January caused the personal property in the bar to be attached by the sheriff. On the 16th of January the plaintiff notified the sheriff of his rights in regard to the bar. The sheriff secured a bond from Macke, Chandler & Co., disregarded the notice, and on the 18th of January, 1907, sold the personal property therein for the sum of P410.90. The plaintiff commenced this action on the 26th of January, 1907, against Carmen de Pascual, her husband, C. E. Duffin, Macke, Chandler & Co., and the sheriff of the city of Manila. Judgment was rendered in the court below in favor of the plaintiff and against Carmen de Pascual and her husband by default in the sum of P4,000. From this judgment these defendants have not appealed.

Judgment was rendered in the court below in favor of Macke, Chandler & Co., and the sheriff, acquitting them of the complaint. From this part of the judgment the plaintiff has appealed.

By the express terms of the contract, which have been above quoted, the plaintiff had the right to rescind it in case the purchaser failed to comply with the terms thereof. That the purchaser did fail so to comply, is admitted; and that the plaintiff had a perfect right to rescind the contract as against the purchaser, can not be questioned, and is not questioned, they having not appealed from the judgment against them. But the question is, what rights has the plaintiff against third persons, namely, Macke, Chandler & Co. and the sheriff?

It is evident that article 1290 and following articles of the Civil Code do not refer to the rescission of contracts such as the one is question. (Judgment of the supreme court of Spain, April 24, 1901.) The rights of the parties to this action are rather governed by articles 1506 and 1124 of that code. Article 1124,1s as follows:

"The right to rescind the obligations is considered as implied in mutual ones, in case one of the obligated persons does not comply with what is incumbent upon him.

"The person prejudiced may choose between exacting the fulfillment of the obligation or its rescission, with indemnity for damages and payment of interest in either case. He may also demand the rescission, even after having requested its fulfillment, should the latter appear impossible.

"The court shall order the rescission demanded, unless there are sufficient causes authorizing it to fix a period.

"This is understood without prejudice to the rights of third acquirers, in accordance with articles 1295 and 1298, and the provisions of the Mortgage Law."

It is true that this article does not directly refer to contracts which expressly give the right to rescind. But, that it was intended to apply to them, we think is evident.

Article 1295 referred to in article 1124 is as follows:

"Rescission obliges the return of the things which were the objects of the contract, with their fruits and the sum with interest; therefore it can only be carried into effect when the person who may have claimed it can return that which, on his part, he is bound to do.

"Neither shall rescission take place when the things which are the object of the contract are legally in the possession of third persons who have not acted in bad faith.

"In such case the indemnity for damages may be claimed from the person who caused the lesion."

The only question in the case is whether or not the plaintiff has the right to rescind this contract against Macke, Chandler & Co. and the sheriff, who are third parties, and that question depends upon whether they are legally in possession of the property and have acted in good faith.

The mere failure to fulfill the contract did not operate as a rescission thereof. It was necessary that the plaintiff take some affirmative action indicating his intention to rescind it. (Judgment [supreme court of Spain] of the 19th of January, 1904.)

As to the defendants, Macke, Chandler & Co., we do not think that the evidence shows that any such action was taken by the plaintiff prior to the sale on the 18th day of January, 1907. The plaintiff alleged that on the 16th day of January he notified the sheriff in writing that he was the owner of the property. This allegation is denied in the answer of the defendants, Macke, Chandler & Co., and, while one of the witnesses testified that a notice was given, he did not testify what the contents of that notice were and the notice itself was apparently not introduced in evidence. So far as Macke, Chandler & Co. are concerned, the judgment in their favor must be affirmed.

But as to the sheriff, different facts appear. Instead of denying the allegations of the complaint in respect to the notice, the sheriff in his answer expressly admitted those allegations and affirmatively alleged the following:

"That on the 16th day of January, 1907, the plaintiff in this case presented an affidavit to this defendant, claiming to be the owner of the aforesaid property, and according to that notice this defendant required and obtained from the said B. H. Macke and W. N. Chandler, a bond to indemnify this defendant for whatever damages he might suffer by reason of the sale of said property in order to satisfy the above referred execution."

It thus appears that the sheriff had a copy of the contract in his possession before he made the sale; that he knew

that the plaintiff had a right to rescind it, and that he knew from the affidavit made that the plaintiff claimed to be the owner of the property and therefore had rescinded it. Under these circumstances it can not be said that the sheriff, when he had possession of the goods for the purpose of selling them on execution, was in possession of them in good faith, within the meaning of that phrase as it is used in article 1295.

This action, in which the plaintiff asked expressly that the contract be declared rescinded, was commenced on the 26th day of January, ten days after the notice was given to the sheriff and eight days after the sale. The plaintiff had the right to have the contract rescinded not only against the original parties thereto but also against the sheriff.

The plaintiff presented no evidence to show what the value of the property actually sold by the sheriff was. He presented evidence to show what the value of certain improvements made by Carmen de Pascual was, but these improvements to a large extent were not susceptible of sale on execution and were not sold. The only evidence to show what the value of the property sold by the sheriff was, is what it brought, namely, P410.90, and as against the sheriff this must be taken as its value.

The judgment of the court below in favor of Macke, Chandler & Co. is affirmed. The judgment in favor of the sheriff is reversed, and judgment is entered against him and in favor of the plaintiff for the sum of P410.90, with interest thereon from the 26th day of January, 1907, and the costs of the Court of First Instance. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, 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.