

ANTONIO M. PABALAN, PLAINTIFF AND APPELLANT, VS. FELICIANO VELEZ, DEFENDANT AND APPELLEE.*G.R. No. 5953. February 24, 1912*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-5953/>**TORRES, J.:**

This case was appealed by counsel for the plaintiff, from the judgment rendered by the Honorable Judge A. S. Crossfield.

On January 20, 1908, counsel for the plaintiff filed a written complaint against the defendant, the administrator of the intestate estate of Walter A. Fitton, now deceased. The said administrator was appointed by an order issued on December 21, 1907, by the aforementioned judge in case No. 5103, heard in the Court of First Instance of this city.

The complaint alleged: That until June 27, 1900, the plaintiff, Antonio M. Pabalan, was the owner in fee simple of a rural estate consisting of an hacienda known by the name of "Pantayani," which was devoted to agricultural purposes, situated on the roads leading from Mariquina to Antipolo, within the pueblos of Cainta and Antipolo, Province of Rizal, and which covered an area of 1,978,822 square meters; also a parcel of land consisting of a building lot situated on Calle Real, of Cainta, measuring 371.30 square meters, the metes and bounds of which were specified in the complaint; that, on the said date of June 27, 1900, the plaintiff, desiring to make use of the two properties described, and lacking the required means for the purpose entered into an agreement with the said Walter A. Fitton whereby they formed a regular mercantile partnership for the development of the said properties and for the manufacture and sale of their products and other business pertinent thereto; "That the sum of 9,000 pesos Mexican currency was fixed as the amount of the capital stock of the partnership, of which 3,000 pesos, in cash, were to be contributed by the plaintiff and 6,000 pesos, in real property, by the said Fitton; that, for the purpose of obtaining the said 3,000 pesos, the plaintiff sold his two aforementioned real properties to the said Walter A. Fitton, the rural estate, shown in Exhibit A, for 5,900 pesos, and the urban property, described in Exhibit B, for 100 pesos; that the plaintiff received from the purchaser the sum of 3,000 pesos and the latter, Walter A. Fitton, bound himself to pay into the funds of the said partnership, as the plaintiff's capital, the remaining 3,000 pesos of the selling price; that it was furthermore agreed that the two said real properties should constitute the capital of Walter A. Fitton in the partnership, which would be known by the name of "A. M. Pabalan and Company" and should be an equivalent for the aforesaid sum of 6,000 pesos; that all the foregoing facts set forth in the complaint were recorded in the instrument of sale and organization of the partnership; executed on June 27, 1900, before the notary public Rosado, a copy of which was attached to and made an integral part of the complaint; that, from June 27, 1900, up to the date when the partner Fitton died, the latter failed to pay into the partnership funds the said 3,000 pesos, the remainder of the price of the properties purchased by him, or any part thereof, and did not pay the said sum or any part of the same to the plaintiff; that, since Fitton's death, and up to the date of the filing of the complaint, neither the administrator of the latter's estate nor any other person had turned into the partnership or paid to the plaintiff the aforesaid 3,000 pesos; that, owing to

the failure of Fitton to comply with his obligation, the properties in question had been entirely unproductive and losses and damages had been occasioned to the plaintiff in the sum of 2,000 pesos Philippine currency. The latter, therefore, prayed for the rescission of the contract entered into, on June 27, 1900, by himself, the plaintiff, and Walter A. Fitton, the dissolution of the partnership "A. M. Pabalan and Company," and the annulment of the sale of the said properties, by returning to the defendant a sum in Philippine currency equivalent to the 3,000 pesos in Mexican currency received from Walter A. Fitton, and that the defendant be sentenced to pay to the plaintiff, as losses and damages, the sum of 2,000 pesos, and to the payment of the cost of the suit, in addition to the other remedies sought.

The instrument attached to the complaint and executed on June 27, 1900, before the notary public Jose M.a Rosado y Calvo, by Antonio M. Pabalan y Santos, on the one hand, and Walter A. Fitton, on the other, contains the following clauses:

"First. That Don Antonio Maria Pabalan y Santos is the sole and exclusive owner in fee-simple of the following landed properties, to wit: (a) A rural estate consisting of an hacienda, known as Pantayanan or Pantaen, devoted to agriculture and situated on the roads which lead from Mariquina to Antipolo, within the pueblos of Cainta and Antipolo of the district of Morong, inscribed in the property registry of this city as of the north district, with an area of 1,978,022 square meters and bounded on the north by the land of Victor Vargas and the Sucabin River, by a part of the Tabang River, Mount Magpatong, the sitio of Palenque and another part of the said Tabang River, as far as the foot of Mount Cay-Alaring, Mount Sapang, and the road leading to the pueblo of Taytay; on the south by the summit of Mount Matugalo, the Paglilingohan estero, the old Cainta highway, and the land of Juan Santa Ana; and one on the west by the lands of Dona Columba Suarez and Don Mariano Sumulong, the Bilao road, and the lands of Perfecto Legaspi, Miguel Gonzalez, Zacarias Gonzalez, Juan Adriano, and that of the aforesaid Juan Santa Ana. And (6) an urban property consisting of a building lot, with neither street nor district number, situated on Calle Real, pueblo of Cainta, Morong District, and in the north district division of the property registry of this city; it is bounded on its front, which faces the south, by the aforesaid Calle Real; on its right, upon entering, or on the east, by the lot belonging to Don Alejandro San Diego and his wife Dona Buenaventura Santos; on its left, or the west, by the lot of Don Pablo Ordóñez and his wife Dionisia Salandanan; and on its rear, or the north, by the lot of Don Florencio San Antonio, his wife and Dona Severina Santos, and has an area of 361 square meters and 30 square centimeters. Second. That the properties hereinbefore described belong to the aforementioned Don Antonio Maria Pabalan y Santos, who purchased the same from their former owner, the firm of G. Buchanan and Company, of the city of London, represented by its agent, Herbert Heiden Todd, through a deed, serial number 852, drawn up in this city and attested before the former notary public of the same, Don Jose Engracio Monroy y Torres, on the twenty-ninth of November, 1894, as shown by the notarial instrument containing the description of the said properties, written by the undersigned notary at the request of their owner, Sr. Pabalan, on the twelfth of the present month of June, which certificate, without number, on account of its notarial character, was exhibited to me by the latter and I certify to the same. Third. That the properties in question are free of all encumbrance, charge, and liability, and Don Antonio Maria Pabalan y Santos and Mr. Walter A. Fitton having agreed to sell the same and to form a regular mercantile partnership for the purpose of their improvement and the utilization of their products, hereby execute the present instrument, in order that all its contents may appear in an authenticated form, and solemnly stipulate: That Don Antonio Maria Pabalan y Santos hereby sells absolutely and finally to Mr. Walter A. Fitton, the property which, under the letters A and B, is mentioned and described in the first paragraph of this instrument, together with all the rights, actions, uses and easements thereto pertaining, for the price of 5,900 pesos, for the property specified under letter A, and the price of 100 pesos, for that described under letter B, that is, for the total price of 6,000 pesos, of which the vendor received in the act, in my presence and in that of the witnesses hereunto, which I, the notary, hereby attest, and from the hands of the vendee, the sum of 3,000 pesos in coin, counted to his entire satisfaction, for which the said Walter A. Fitton hereby acknowledges by a binding receipt which secures the said Antonio M. Pabalan in all his rights and the vendor binds himself to protect and defend the title to the properties hereby sold and guarantees them in accordance

with law; and the vendee shall retain the remaining 3,000 pesos for the purpose of bringing them, as the vendor's capital, into the partnership which is also a subject of this public instrument. Fourth. Walter A. Fitton, in his turn, covenants: That he accepts this sale in the precise terms in which it is executed by Antonio Maria Pabalan y Santos. Fifth. That, by virtue of the preinserted stipulations, both parties to this contract, by this same public instrument, form a regular mercantile partnership, upon the following bases and conditions: 1. The company organized through the present public instrument shall operate under the firm name of 'A. M. Pabalan and Company and shall have its domicile, for all legal purposes, in this city of Manila. 2. The object and aim of the company is the cultivation and improvement of the two properties described under letters A and B of the first paragraph hereof, the manufacture and sale of their products, and the conduct of all other business connected with, incidental or pertinent to the said lands. 3. The management, direction and administration of the company shall be in charge of the two partners who shall both be entitled to use the firm name, it being therefore understood that they are authorized to carry on, jointly or severally, all kinds of operations comprised within the purposes of this partnership with the sole limitation that neither of them may make the company a surety or borrow money for the same, without its being necessary, with respect to this latter prohibition, for Mr. Pabalan to state that it does not suit him to increase his capital to an amount equal to that invested by Mr. Fitton. Both partners are likewise authorized, for the purposes of management, to appoint general or special attorneys-in-fact to represent the company, as well as attorneys to demand and collect such credits and bring such suits before the courts as be proper. 4. The management of agricultural matters pertaining to the rural and the urban property described in the first paragraph of this instrument, shall be solely and exclusively in charge of the partner Antonio Maria Pabalan or of the person by him designated for this purpose. 5. The capital stock is composed of the total sum of 9,000 pesos contributed by the partners in the following: proportion and form: Antonio Maria Pabalan, 3,000 pesos in cash, which shall be paid into the partnership fund by Walter A. Fitton, who, for this purpose, has retained them in his possession upon his paying: the amount of the sale herein set forth; Walter A. Fitton, 6,000 pesos, represented by the two properties described under letters A and B in the first paragraph herein, and in which the said lands are by common accord appraised. 6. The partners may not engage, in the Province of Morong, in the same kinds of business engaged in by this company, but they mutually authorize each other personally to carry on and conduct any such business at any other place outside of the said province. 7. Any and all rural or city properties which Mr. Pabalan may acquire to the west of the hacienda hereinabove described under letter A, shall necessarily form a part of the hacienda itself. 8. The term of the existence of this partnership shall be twenty-five years, which shall begin to run from this date and may be extended at the will of the contracting parties. 9. In order that a regular and orderly course be pursued in the management of the company, and the losses and profits of the latter ascertained, an annual balance of accounts shall be struck in the month of June of each year, in addition to such other balances as the partners may, by mutual accord, determine. 10. If, during the term of this contract, either of the partners should die, the company shall not, on such account, be considered as dissolved, but shall be continued by the surviving partner and the heirs of the deceased partner, unless it should suit the former to be separated from the latter, in which case he shall deliver to such heirs the part of the capital that belonged to the deceased, together with all the latter's vested rights. 11. The profits obtained and losses suffered by the company shall be shared by the partners in proportion to the capital invested by each respectively. 12. The partners may, by agreement, change the company hereby organized into a joint stock company, in which case they shall observe and comply with the formalities provided and prescribed by the existing Code of Commerce in respect to companies of this kind. 13. All questions, controversies, doubts or differences which may arise between the partners, by reason of this company or from any acts performed by them on account of the same, shall be determined by the decision of friendly arbitrators appointed one by each party, such appointees so designated to choose a third arbitrator in case of disagreement."

The demurrer interposed to the complaint having been overruled by an order of April 1, 1908, and exception thereto taken by the defendant, the latter, on the 11th of the same month, filed a written answer wherein he set forth that he admitted the allegations contained in paragraphs 1, 2, and 4 of the complaint and denied, generally and specifically, each and all of those contained in paragraphs 3, 5, 6, 7, 8, and 9.

As a special defense the defendant alleged that the action prosecuted by the plaintiff had prescribed; that the fact that the properties of the company known as "A. M. Pabalan and Company" had been unproductive was exclusively due to the great negligence of the plaintiff since he had had more than sufficient time, from June 27, 1900, to the date of the death of Fitton, to have demanded from his copartner the sum offered by the latter and which he was to contribute to the common assets, and that, notwithstanding all the time that had elapsed since the execution of the articles of partnership, up to the date of the presentation of the complaint the plaintiff had never required his copartner to turn into the partnership funds the capital pledged.

The defendant, in his cross-complaint and counterclaim, set forth: That, according to the said articles of partnership, the plaintiff had the management of agricultural matters pertaining to the properties, rural and urban, described therein, and, consequently, was alone responsible for the successful management of the company; that, also, according to the articles of partnership, either of the two partners had charge of the management, direction, and administration of the company; that, some months after the execution of the said instrument of partnership, Walter A. Fitton was obliged, for reasons of health, to go abroad, where he resided until his death, and during his absence from this city the plaintiff, Antonio M. Pabalan, with notable negligence and abandonment of the interests of the company, failed to attend to the administration of its affairs and did not employ on his part any means to maintain in a productive condition the two properties brought into the partnership by the partner Fitton, and that, through the negligence, abandonment, and carelessness of the plaintiff Pabalan, the defendant suffered losses and damages in the sum of P3,000 Philippine currency; the latter, therefore, prayed that the complaint be dismissed and that, by reason of his cross-complaint and counterclaim, an award be made in his behalf, and against the plaintiff, for losses and damages, in the sum of P3,000 Philippine currency, with the costs.

By a written motion of March 19, 1909, Antonio Vasquez represented: That, owing to the death of the plaintiff, the hearing of the case had to be suspended until, on the 4th of March, as aforesaid, letters of administration were issued in his behalf, relative to the estate of the plaintiff Pabalan; and he therefore prayed that he be admitted as a party in the capacity of administrator of the estate of the deceased Antonio M. Pabalan.

The case having come to trial on April 29, 1909, with the introduction of oral evidence by counsel for the plaintiff, the court, on July 9 of the same year, pronounced judgment and found that the defendant had not proved any of the damages alleged in his answer, and was not entitled to any recovery therefor, nor the plaintiff for the taxes that he had paid. The court ordered a dissolution of the partnership formed between the plaintiff and the deceased Walter A. Litton and a rescission of the sale and contract of partnership executed between them on July 27, 1900, and further ordered that the defendant, as the administrator of the estate of the said deceased Walter A. Fitton, deliver to the plaintiff, upon the latter's paying to the defendant, out of the property which belonged to the aforesaid deceased, the sum of P3,000 Mexican currency, equivalent to P2,700 Philippine currency, the following real properties.

"A. A rural estate consisting of an hacienda, known as Pantayani or Pantaen, devoted to agriculture and situated on the roads from Mariquina to Antipolo, within the pueblos of Cainta and Antipolo of the old district of Morong, now Province of Rizal, having an area of 1,978,822 square meters, bounded on the north by the land of Victor Vargas and the Sucabin River; on the east by a part of the said Sucabin River, a part of the Tabang River, Mount Nagtapong, the sitio of Palenque, and by another part of the Tabang River toward the base of Mount Cay-Alaring, Mount Sapang, and the road leading to the pueblo of Taytay; on the south by the summit of Mount Matugalo, the Paglilingohan estero, the old Cainta highway, and the land of Juan Santa Ana; and on the east by the lands of Columba Suarez and Mariano Sumulong, the Bulao Road, and the lands of Perfecto Legaspi, Miguel Gonzalez, Zacarias Gonzalez, Juan Adriano, and of the aforementioned Juan Santa Ana.

"B. An urban property consisting of a building lot, without either street or district number, situated on Calle

Real in Cainta, a municipality of the Province of Rizal; bounded on its front, which faces the south, by the aforesaid Calle Real; on its right, upon entering, or on the east, by the lot belonging to Alejandro San Diego and his wife Buenaventura Santos; on its left, or the west, by the lot of Pablo Ordóñez and his wife Dionisia Saladanán; and on its rear, or the north, by the lot of Florencio San Antonio and his wife Severina Santos, with an area of 361 square meters and: 80 square centimeters."

This litigation concerns the dissolution of a regular mercantile partnership and the rescission of the sale of certain real properties, the contracts with respect to which were entered into between Antonio M. Pabalan y Santos, on one hand, and Walter A. Fitton, on the other, according to a notarial instrument executed by the contracting parties on July 27, 1900.

The plaintiff's claim is founded on the alleged fact that the said Walter A. Fitton failed to comply with his obligations as stipulated in the said double contract, inasmuch as he did not pay into the funds of the company entitled "A. M. Pabalan and Company," as the capital of the partner Pabalan, the sum of P3,000, or the remainder of P6,000, the price of the properties which he had purchased from the plaintiff, did not pay to the latter the said amount, nor any part thereof, nor was such payment made, after the said Fitton's death, by the administrator of the latter's estate.

Article 1506 of the Civil Code prescribes :

"The sale shall be rescinded for the same causes as all other obligations," etc.

Article 1124 provides:

"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 with the provisions of the Mortgage Law."

Article 116 of the Code of Commerce prescribes:

"Articles of association by which two or more persons obligate themselves to place in a common fund any property, industry, or any of these things, in order to obtain profit, shall be commercial, no matter what its class may be, provided it has been established in accordance with the provisions of this code."

After the organization of the general mercantile partnership denominated "A. M. Pabalan and Company," through the aforesaid instrument of June 27, 1900, the partner Fitton did not turn into the company funds the sum of P3,000, in the name and to the credit of Pabalan, as the latter's capital, which sum was a part of the price of the sale of the two real properties purchased from the said Pabalan by his partner Fitton who, in turn, brought the said two parcels of land, as his capital, into the common fund without having paid the said sum up to the time when he absented himself from these Islands, a few months after the establishment of the partnership, and died in a foreign country.

It was duly proved at the trial of this case, that the partner Walter A. Fitton failed to observe the stipulations of the two aforesaid contracts; that he did not pay any part of the price of the sale of the two parcels of land which he had purchased from his partner, Antonio M. Pabalan, and, consequently, did not turn into the company funds, as

capital of the said Pabalan, the sum of which the said price consisted; it is therefore unquestionable that he did not comply with his two principal obligations, assumed in the said double contract wherein he expressly agreed that the said P3,000, a part of the price of the two pieces of land that he purchased from Pabalan, would be by him turned into the fund of the general partnership which they had formed, as capital of the partner Pabalan. .

In case one of the parties to a contract does not fulfill his obligation as stipulated therein, the other contracting party, by the provisions of the above-quoted article 1124 of the Civil Code, is entitled to demand the rescission of the contract, as such obligations are mutual, and the court must order the rescission demanded. The partner, Walter A. Fitton, came within such a case, since he failed to pay any part of the price of the two properties which he had acquired and did not turn into the company fund, as capital of the vendor partner, the sum representing such sale, and therefore justice requires the dissolution of the aforementioned company and the rescission of the said sale, in conformity with the finding contained in the judgment appealed from and the prayer rightfully and lawfully made by the partner who did not violate his obligations as set forth in the said contract.

During the course of this suit in the Court of First Instance, the plaintiff, Antonio M. Pabalan, also died; and if the latter, while living, was not obliged, according to clause 10 of the articles of partnership,[^] continue in the company after the decease of his copartner, and had a right to withdraw therefrom or from the heirs of the deceased Walter A. Fitton, after the death of the partner Pabalan, neither are the latter's successors in interest obliged to continue in the company, and, therefore, under this circumstance, the propriety of the judgment appealed from is still more evident.

With respect to the interest on the capital which belonged to Pabalan, and which Fitton failed to turn into the company fund in conformity with the agreement made, and in regard to the amount of the losses and damages occasioned by the noncompliance, on the part of the partner Fitton, with the stipulated provisions, both such amounts should be considered as the company losses and computed pro rata, in proportion to the extent that each partner is interested in the company and on the same basis as the profits. (Arts. 140 and 141 of the Code of Commerce.)

As regards the amount of the land tax, which the partner Pabalan had to pay, amounting to P522.30, under the assessment levied upon the two real properties owned by the company, inasmuch as the latter is the owner of the said two parcels of land, which form the assets of the company known as "A. M. Pabalan and Company," it is unquestionable that this company should have paid the said tax to the Government, and the same being paid by the partner Pabalan out of his private funds and not of those of the company, he was solely entitled to be reimbursed for two-thirds of the said sum paid, in proportion to the amount of the respective capital. brought in, which two-thirds of the sum of P522.30, that is, P348.20, may be deducted from the sum of P2,700 Philippine currency, equivalent to P3,000 Mexican currency, which the estate of Antonio M. Pabalan must restore to the testate or intestate estate of Walter A. Fitton, upon the defendant's returning to the plaintiff the two aforesaid parcels of land.

For the reasons hereinbefore stated, we are of opinion that the judgment appealed from should be and is hereby affirmed, with no special finding as to the costs; provided, however, that the administrator of the estate of the deceased Fitton shall deliver to the administrator of the estate of Pabalan the two parcels of land, the sale of which was rescinded, upon payment by the last named administrator to that of the estate of Fitton, of the sum of P2,700, equivalent to 3,000 Mexican pesos, the said administrator of the Pabalan estate being entitled to deduct from the said sum that of P348.20, which is two-thirds of the amount paid as land tax on the properties concerned. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, and Trent, 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.