

GUTIERREZ HERMANOS, PLAINTIFF AND APPELLEE, VS. ENGRACIO ORENSE, DEFENDANT AND APPELLANT.*G.R. No. 9188. December 04, 1914*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-9188/>**TORRES, J.:**

Appeal through bill of exceptions filed by counsel for the appellant from the judgment rendered on April 14, 1913, by the Honorable P. M. Moir, judge, wherein he sentenced the defendant to make immediate delivery of the property in question, through a public instrument, by transferring and conveying to the plaintiff all his rights in the property described in the complaint and to pay it the sum of P780, as damages, and the costs of the suit.

On March 5, 1913, counsel for Gutierrez Hermanos filed a complaint, afterwards amended, in the Court of First Instance of Albay against Engracio Orense, in which he set forth that on and before February 14, 1907, the defendant Orense had been the owner of a parcel of land, with the buildings and improvements thereon, situated in the pueblo of Guinobatan, Albay, the location, area and boundaries of which were specified in the complaint; that the said property has up to date been recorded in the new property registry in the name of the said Orense, according to certificate No. 5, with the boundaries therein given; that, on February 14, 1907, Jose Duran, a nephew of the defendant, with the latter's knowledge and consent, executed before a notary a public instrument whereby he sold and conveyed to the plaintiff company, for P1,500, the aforementioned property, the vendor Duran reserving to himself the right to repurchase it for the same price within a period of four years from the date of the said instrument; that the plaintiff company had not entered into possession of the purchased property, owing to its continued occupancy by the defendant and his nephew, Jose Duran, by virtue of a contract of lease executed by the plaintiff to Duran, which contract was in force up to February 14, 1911; that the said instrument of sale of the property, executed by Jose Duran, was publicly and freely confirmed and ratified by the defendant Orense in a verbal declaration made by him on March 14, 1912, in the Court of First Instance of Albay, to the effect that the said instrument of sale was executed by Duran with the knowledge and consent of the defendant, Orense; that, in order to perfect the title to the said property, the plaintiff had to demand of the defendant that he execute in legal form a deed of conveyance of the property, but that the defendant Orense refused to do so, without any justifiable cause or reason, wherefore he should be compelled to execute the said deed by an express order of the court, for Jose Duran is notoriously insolvent and cannot reimburse the plaintiff company for the price of the sale which he received, nor pay any sum whatever for the losses and damages occasioned by the said sale, aside from the fact that the plaintiff had suffered damage by losing the present value of the property, which was worth P3,000; that, unless such deed of final conveyance were executed in behalf of the plaintiff company, it would be injured by the fraud perpetrated by the vendor, Duran, in connivance with the defendant; that the latter had been occupying the said property since February 14, 1911, and refused to pay the rental thereof, notwithstanding the demand made upon him for its payment at the rate of P30 per month, the just and reasonable value for the occupancy of the said property, the possession of which the defendant likewise refused to deliver to the plaintiff company, in spite of the continuous demands made upon him, the defendant, with bad faith and to the prejudice of the firm of Gutierrez Hermanos, claiming to have rights of ownership and possession in the said property. Therefore it was prayed that

judgment be rendered by holding that the land and improvements in question belong legitimately and exclusively to the plaintiff, and ordering the defendant to execute in the plaintiff's behalf the said instrument of transfer and conveyance of the property and of all the right, interest, title and share which the defendant has therein; that the defendant be sentenced to pay P30 per month for damages and rental of the property from February 14, 1911, to the date of the restitution of the property to the plaintiff, and that, in case these remedies were not granted to the plaintiff, the defendant be sentenced to pay to it the sum of P3,000 as damages, together with interest thereon since the date of the institution of this suit, and to pay the costs and other legal expenses.

The demurrer filed to the amended complaint was over-ruled, with exception on the part of the defendant, whose counsel made a general denial of the allegations contained in the complaint, excepting those, that were admitted, and specifically denied paragraph 4 thereof to the effect that on February 14, 1907, Jose Duran executed the deed of sale of the property in favor of the plaintiff with the defendant's knowledge and consent.

As the first special defense, counsel for the defendant alleged that the facts set forth in the complaint with respect to the execution of the deed did not constitute a cause of action, nor did those alleged in the other form of action for the collection of P3,000, the value of the realty.

As the second special defense, he alleged that the defendant was the lawful owner of the property claimed in the complaint, as his ownership was recorded in the property registry, and that, since his title had been registered under the proceedings in rem prescribed by Act No. 496, it was conclusive against the plaintiff and the pretended rights alleged to have been acquired by Jose Duran prior to such registration could not now prevail; that the defendant had not executed any written power of attorney nor given any verbal authority to Jose Duran in order that the latter might, in his name and representation, sell the said property to the plaintiff company; that the defendant's knowledge of the said sale was acquired long after the execution of the contract of sale between Duran and Gutierrez Hermanos, and that prior thereto the defendant did not intentionally and deliberately perform any act such as might have induced the plaintiff to believe that Duran was empowered and authorized by the defendant and which would warrant him in acting to his own detriment, under the influence of that belief. Counsel therefore prayed that the defendant be absolved from the complaint and that the plaintiff be sentenced to pay the costs and to hold his peace forever.

After the hearing of the case and an examination of the evidence introduced by both parties, the court rendered the judgment aforementioned, to which counsel for the defendant excepted and moved for a new trial. This motion was denied, an exception was taken by the defendant and, upon presentation of the proper bill of exceptions, the same was approved, certified and forwarded to the clerk of this court.

This suit involves the validity and efficacy of the sale under right of redemption of a parcel of land and a masonry house with a nipa roof erected thereon, effected by Jose Duran, a nephew of the owner of the property, Engracio Orense, for the sum of P1,500 by means of a notarial instrument executed and ratified on February 14, 1907.

After the lapse of the four years stipulated for the redemption, the defendant refused to deliver the property to the purchaser, the firm of Gutierrez Hermanos, and to pay the rental thereof at the rate of P30 per month for its use and occupation since February 14, 1911, when the period for its repurchase terminated. His refusal was based on the allegations that he had been and was then the owner of the said property, which was registered in his name in the property registry; that he had not executed any written power of attorney to Jose Duran, nor had he given the latter any verbal authorization to sell the said property to the plaintiff firm in his name; and that, prior to the execution of the deed of sale, the defendant performed no act such as might have induced the plaintiff to believe that Jose Duran was empowered and authorized by the defendant to effect the said sale.

The plaintiff firm, therefore, charged Jose Duran, in the Court of First Instance of the said province, with estafa,

for having represented himself in the said deed of sale to be the absolute owner of the aforesaid land and improvements, whereas in reality they did not belong to him, but to the defendant Orense. However, at the trial of the case Engracio Orense, called as a witness, being interrogated by the fiscal as to whether he had consented to Duran's selling the said property under right of redemption to the firm of Gutierrez Hermanos, replied that he had. In view of this statement by the defendant, the court acquitted Jose Duran of the charge of estafa.

As a result of the acquittal of Jose Duran, based on the explicit testimony of his uncle, Engracio Orense, the owner of the property, to the effect that he had consented to his nephew Duran's selling the property under right of repurchase to Gutierrez Hermanos, counsel for this firm filed a complaint praying, among other remedies, that the defendant Orense be compelled to execute a deed for the transfer and conveyance to the plaintiff company of all the right, title and interest which Orense had in the property sold, and to pay to the same the rental of the property due from February 14, 1911.

Notwithstanding the allegations of the defendant, the record in this case shows that he did give his consent in order that his nephew, Jose Duran, might sell the property in question to Gutierrez Hermanos, (and that he did thereafter confirm and ratify the sale by means of a public instrument executed before a notary.

It having been proven at the trial that he gave his consent to the said sale, it follows that the defendant conferred verbal, or at least implied, power of agency upon his nephew Duran, who accepted it in the same way by selling the said property. The principal must therefore fulfill all the obligations contracted by the agent, who acted within the scope of his authority. (Civil Code, arts, 1709, 1710 and 1727.)

Even should it be held that the said consent was granted subsequently to the sale, it is unquestionable that the defendant, the owner of the property, approved the action of his nephew, who in this case acted as the manager of his uncle's business, and Orense's ratification produced the effect of an express authorization to make the said sale. (Civil Code, arts. 1888 and 1892.)

Article 1259 of the Civil Code prescribes: "No one can contract in the name of another without being authorized by him or without having his legal representation according to law.

"A contract executed in the name of another by one who has neither his authorization nor legal representation shall be void, unless it should be ratified by the person in whose name it was executed before being revoked by the other contracting party."

The sworn statement made by the defendant, Orense, while testifying as a witness at the trial of Duran for estafa, virtually confirms and ratifies the sale of his property effected by his nephew, Duran, and, pursuant to article 1313 of the Civil Code, remedies all defects which the contract may have contained from the moment of its execution.

The sale of the said property made by Duran to Gutierrez Hermanos was indeed null and void in the beginning, but afterwards became perfectly valid and cured of the defect of nullity it bore at its execution by the confirmation solemnly made by the said owner upon his stating under oath to the judge that he himself consented to his nephew Jose Duran's making the said sale. Moreover, pursuant to article 1309 of the Code, the right of action for nullification that could have been brought became legally extinguished from the moment the contract was validly confirmed and ratified, and, in the present case, it is unquestionable that the defendant did confirm the said contract of sale and consent to its execution.

On the testimony given by Engracio Orense at the trial of Duran for estafa, the latter was acquitted, and it would not be just that the said testimony, expressive of his consent to the sale of his property, which determined the acquittal of his nephew, Jose Duran, who then acted as his business manager, and which testimony wiped out the deception that in the beginning appeared to have been practiced by the said Duran, should not now serve in

passing upon the conduct of Engracio Orense in relation to the firm of Gutierrez Hermanos in order to prove his consent to the sale of his property, for, had it not been for the consent admitted by the defendant Orense, the plaintiff would have been the victim of estafa.

If the defendant Orense acknowledged and admitted under oath that he had consented to Jose Duran's selling the property in litigation to Gutierrez Hermanos, it is not just nor is it permissible for him afterward to deny that admission, to the prejudice of the purchaser, who gave P1,500 for the said property.

The contract of sale of the said property contained in the notarial instrument of February 14, 1907, is alleged to be invalid, null and void under the provisions, of paragraph 5 of section 335 of the Code of Civil Procedure, because the authority which Orense may have given to Duran to make the said contract of sale is not shown to have been in writing and signed by Orense, but the record discloses satisfactory and conclusive proof that the defendant Orense gave his consent to the contract of sale executed in a public instrument by his nephew Jose Duran. Such consent was proven in a criminal action by the sworn testimony of the principal and presented in this civil suit by other sworn testimony of the same principal and by other evidence to which the defendant made no objection. Therefore the principal is bound to abide by the consequences of his agency as though it had actually been given in writing. (Conlu vs. Araneta and Guanko, 15 Phil. Rep., 387; Gallemitt vs. Tabiliran, 20 Phil. Rep., 241; Kuenzle & Streiff vs. Jiongco, 22 Phil. Rep., 110.)

The repeated and successive statements made by the defendant Orense in two actions, wherein he affirmed that he had given his consent to the sale of his property, meet the requirements of the law and legally excuse the lack of written authority, and, as they are a full ratification of the acts executed by his nephew Jose Duran, they produce the effects of an express power of agency.

The judgment appealed from is in harmony with the law and the merits of the case, and the errors assigned thereto have been duly refuted by the foregoing considerations, so it should be affirmed.

The judgment appealed from is hereby affirmed, with the costs against the appellant.

Arellano, C. J., Johnson, Carson, Moreland, and Araullo, 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.