

McDonald v Denny Lascelles Ltd (1933) 48 CLR 457

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Facts

- On 19 February 1930, Denny Lascelles Ltd ("**Lascelles**") was assigned rights under a contract for a sale of land. He became the vendor to a future purchase by Rye Grazing Co. Pty Ltd ("**RGC**").
- RGC needed more time to pay an instalment of £1,000.00, and Lascelles agreed so long as John McDonald and Arthur Holdsworth served as a guarantor.
- However, that sum was never paid by RGC or Mr McDonald.
- The contract was later repudiated and then ended.
- Lascelles sought to recover the amount of the instalment from Mr McDonald as guarantor.

Issues

- Can instalments be recovered as liquidated sums regardless of performance?

Held

- The High Court held that, generally, a vendor is not entitled to sue for purchase money as a debt if a contract for the purchase of land has failed on the part or refusal of a purchaser.
- In this situation, a vendor can only sue for specific performance or for damages.
- However, if there is a contrary *express* intention under the contract, it can be recovered as a debt.
- As no consideration had been provided by Denny Lascelles, it did not attain a right to the instalment and the purchasers had a right to recover it.
- A guarantee or surety is not liable on the guarantee where the principal debt cannot be enforced.

Quotes

"As a general rule, on the failure or refusal of a purchaser to complete an executory contract for the purchase of land the vendor is not entitled to sue for the purchase money as a debt. He is entitled merely to sue for specific performance or for damages for the loss of his bargain. It is only when the contract has been completed by the execution and acceptance of a conveyance that unpaid purchase money may become a debt and can be recovered accordingly."

(Dixon J at page 475)

"...whenever a contrary intention is shown by the express terms of the contract...a contrary intention is sufficiently shown in all cases in which by the express terms of the contract the purchase money or any part thereof is made payable on a fixed day, not being the agreed day for the completion of the contract by conveyance."

(Dixon J at page 476)

Full Text

The full text is available here: <https://jade.io/summary/mnc/1933/HCA/25>

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