

[G.R. No. 453. March 12, 1903]

**ANTONIO VENTURA, PLAINTIFF AND APPELLANT, VS. PAUL A. MILLER,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

On September 1, 1899, Dona Eumelia Eleizegui, widow of Revilla, leased the house in question to Dona Joseftna Reynoso, wife of Paul A. Miller, for two years from said date at the rent of 26. pesos a month, payable during the first six days of each month. No mention was made in the lease of any future sale of the property. It was never inscribed in the registry of property. On December 6, 1900, Dona Eumelia sold the property to the plaintiff. No mention of the lease was made in the deed and the grantor stated therein that the property was free from all incumbrance. On December 14, 1900, the plaintiff notified the tenant that he must vacate the house at the end of the month or pay 80 pesos a month thereafter. The tenant refused to either pay this increased rent or to vacate the premises and prior to January 11, 1901, deposited with a notary the rent for December and January at the rate of 26 pesos a month. The plaintiff took from the notary the rent for December under the protest contained in the receipt which she then gave, but refused to take the rent for January. On March 11, 1901, she commenced this action for unlawful detainer against Miller and his wife. It was defended by Dona Eumelia, the lessor.

She claimed that there was a verbal agreement between her and the plaintiff at the time of the sale to the effect that the lease should be respected. The evidence in the case does not show this.

She also claimed that by accepting the December rent the plaintiff recognized the validity of the lease. The sale was made on December 6. The matter of the rent for this month was the subject of a verbal contract between the seller and purchaser, and the seller agreed that the purchaser might collect it. Under all the circumstances in the case the acceptance of this

rent by the plaintiff in January after the notices given by her in December did not bind her to respect the lease. She had the right to terminate it (art. 1571, Civil Code), and the judgment should have been in her favor.

The judgment of the court below is reversed and judgment is ordered for the plaintiff directing the eviction asked by the plaintiff, with costs of the first instance against the defendants and without especial order as to the costs of this instance.

Arellano, C. J., Cooper, Mapa, and Ladd, JJ., concur.

Torres, J., did not sit in this case.
