

4 Phil. 710

[G.R. No. 1879. August 26, 1905]

**JULIAN GONZALEZ PARRADO, PLAINTIFF AND APPELLEE, VS. JOJUAYCO Y JUAYA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

TORRES, J.:

On February 17, 1904, the plaintiff, Julian Gonzalez Parrado, filed an amended complaint in the above-entitled action praying that judgment be rendered in his favor, and against the defendant for the sum of 960 pesos, Mexican currency, for rent due him from the latter; that the defendant be directed to pay the damages sustained by him by reason of the destruction of his *camarin*, as well as the corresponding legal interest on the aforesaid sum and the costs of these proceedings. He also prayed for such other and further relief as the court deemed just and equitable.

The defendant in his answer, filed February 18, 1904, denied each and all of the allegations contained in the various paragraphs of the amended complaint.

The court, after due consideration of the evidence introduced by both parties during the trial, rendered judgment on the 20th of the same month directing: (1) that defendant pay to the plaintiff the sum of 260 pesos and accrued interest thereon at the rate of 6 per cent per annum, from the date of said judgment until paid, and (2) that defendant pay the costs; holding that the plaintiff was not entitled to recover any damages at all, nor even the value of the *camarin* destroyed, but had a right to recover the rent due him for the use of his *camarin* during the period of one year and two months that defendant was in possession of the same at the rate of 20 pesos per month.

The plaintiff did not except to that part of the judgment of the court below favorable to the defendant which relates to the question of damages, etc. The appeal was taken from that part of the judgment relating to the right of the plaintiff to recover the rent due for the use of his *camarin* for the period of one year and two months at the rate of 20 pesos per month. This is the only question raised by defendant's appeal and by the bill of exceptions certified to this court. This decision, therefore, shall only deal with the question whether there was any lease executed with respect to the "*camarin*" in question, and whether or not the defendant should pay rent as contended by the plaintiff.

It is the duty of the party seeking to enforce a right to prove that the right actually exists. The testimony of witnesses is one of the means prescribed by law for this purpose, except in cases where the law itself expressly prohibits its admission as evidence of such fact. (Arts. 1214, 1215, and 1244 of the Civil Code.)

It appears from the testimony of record, and the Court of First Instance so found, that the defendant Jo-Juayco y Juaya occupied the plaintiff's *camarin* on Calle Sevilla, Iligan, from March, 1901, until May, 1902, under the terms of a lease entered into between the defendant and another Chinaman by the name of Co-Guanco, the person in charge of the premises.

The defendant denied the existence of the lease. He failed, however, to prove that he occupied the premises in question by the mere tolerance of the plaintiff or otherwise except as a tenant.

The appellant further failed to show that he had paid the rent stipulated in the lease, except for one month. The facts are therefore sufficient to support the judgment of the court below, which is accordingly hereby affirmed. It is the duty of the lessee to pay the rent in the manner stipulated in the lease. (Art. 1555 of the Civil Code.)

The defendant failed to pay the rent due and has, without any justification, allowed this action to proceed, therefore he should also

pay the legal interest due on the sum awarded the plaintiff by the court below and the costs of this action. (Art. 1108 of the Civil Code and sec. 487 of the Code of Civil Procedure.)

We are of the opinion that the judgment of the lower court, dated February 20, 1904, should be affirmed. The appellant shall pay the costs. After the expiration of twenty days let judgment be entered accordingly, and let the case be remanded to the court below for action in accordance herewith.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.
Willard, J., did not sit in this case.

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