

[G.R. No. 2021. January 05, 1906]

**ANICETO LORENZO, PLAINTIFF AND APPELLANT, VS. JOSI NAVARRO,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

The principal question in this case is one of fact. The defendant was in possession of two fisheries. Plaintiff claimed that he was occupying them as his (plaintiff's) tenant, by virtue of a contract of lease made between the defendant and the father of the plaintiff, Cornelio Lorenzo, in 1894. The defendant's claim is that at that time Cornelio Lorenzo was a tenant of an estate of which the parish priest was the administrator; that the tenant was in arrears in regard to the rent; that a contract was then made between him, Cornelio Lorenzo, and the defendant, by the terms of which the defendant agreed to pay to the administrator the rent then due, and to pay Cornelio Lorenzo the value of his improvements; that he made both of these payments, and in consideration thereof Cornelio Lorenzo transferred to him all his interest in the fisheries. In support of this claim the defendant produced a document signed by the parish priest as administrator as aforesaid, and by Cornelio Lorenzo, which proved this contention. The judge rejected this evidence upon the ground that the fisheries named in the document were not identified as the fisheries in question in this suit. An examination of the evidence in the case, however, shows not only that the defendant testified that they were the same fisheries but also that the plaintiff himself testified that the only fisheries in which his father was ever interested were the ones occupied by the defendant, and to which this suit relates.

There having been a motion for a new trial, we are required to consider the whole evidence, and to render such judgment thereon as is just. (Sec. 497, Code of Civil Procedure, *Benedicto vs. de la Rama*,^[1] 2 Off. Gaz., 166.)

The appellant in his brief presents a question as to the admissibility of certain evidence under the pleadings. The defendant's answer was a general denial of all the allegations of the complaint. Under this general denial he was entitled to prove any facts which tended directly to show that the contract between himself and the father of the plaintiff was not one of lease, but was for example, one of sale. He was not required to allege these facts in his answer as a special defense.

The evidence strongly preponderates in favor of the judgment rendered for the defendant by the court below, and it is accordingly affirmed, with the costs of this instance against the appellant, and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below for execution. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.

^[1] 3 Phil. Rep., 34.
