

5 Phil. 571

[G.R. No. 2285. January 25, 1906]

**FREDERICK GARFIELD WAITE, PLAINTIFF AND APPELLEE, VS. WILLIAMS,
CHANDLER & CO., DEFENDANTS AND APPELLANTS.**

D E C I S I O N

WILLARD, J.:

By the final judgment of this court, entered on the 21st of May, 1903, in the case of La Junta Administradora de Obras Pias vs. Regidor^[1] (1 Off. Gaz., 274), the Obras Pias were declared to be the owners of certain houses in Calle Magallanes, in Manila, formerly owned and possessed by the defendant in that suit, Ricardo Regidor. On the day last mentioned that case was remanded to the court below, an order for the execution of the sentence was there made, a writ of execution was issued, placed in the hands of the sheriff, and on the same day the Obras Pias were by him put in actual possession of the property.

For more than twenty years prior to this date Regidor had been in possession of this property, and at some date which does not appear he had leased the same by a written contract to Williams, Chandler & Co., the defendants, who were in possession thereof as such tenants on the 21st of May, 1903. By the terms of this contract the rent was payable in advance within the first five days of the month, so that the rent for the month of May, 1903, was payable by the terms of the contract before the 5th of May. On the 13th of May Regidor assigned to the plaintiff the rent for the month of May, amounting to \$325, United States money, and on the 16th day of May the defendants were notified of this assignment, and demand was made on them by the plaintiff for the payment to him of said amount of \$325, which payment they refused to make. On the 21st day of May the defendants were notified by the sheriff that the Obras Pias had been placed in possession of the property, and that the rent from that date should be paid to them. The defendant paid the Obras Pias that part of the rent corresponding to the time from the 21st of May to the end of the month, and have in their hands the balance of the sum of |325, to wit, the sum of \$216.66, which they

have not paid to anyone. Plaintiff brought this action against the defendants to recover the full sum of \$325. He had judgment below, and the defendants moved for a new trial, which was denied, and they have brought the case here by bill of exceptions.

In their brief in this court they claim that the judgment should be reversed, because the Obras Pias was a necessary party in the suit. This objection was not made in the court below, either by demurrer or answer, and was accordingly waived. (Sec. 93, Code Civ. Pro.; Tan Diangseng Tan Siu Pic vs. Lucio Echaz,^[1] No. 1973, 4 Off. Gaz., 143).

The rents in question in this case were civil products according to the provisions of article 355 of the Civil Code, Part of article 451 of the Civil Code is as follows:

“Civil fruits are considered as daily proceeds, and belong to the possessor in good faith in this proportion.”

The same rule is announced in article 474 relating to usufruct. For the first twenty days of the month of May Eegidor was the owner and entitled to the possession of this property, and laying aside, for the present, the question of good or bad faith, he was entitled to the rent produced thereby for that time. From the 20th of the month to the end of the month the Obras Pias were the owners of the property, and entitled to the rent produced by it during that time. By the provisions of the articles of the Civil Code above quoted this rent is considered as produced day by day, and consequently the rent for the whole month of May must be divided in proportion to the time during which each one of said parties was the owner of the property. The Obras Pias were, therefore, entitled to the rent for the last ten days, and Regidor to the rent for the first twenty days. This right which Regidor had he assigned to the plaintiff, who became entitled to receive from the defendants the rent for that period.

The rent was by the terms of the contract between Regidor and the defendants payable in advance, but this contract between these parties could not affect the rights of the Obras Pias. Regidor had no right to rent the property for any period after the 20th of May, and he could not deprive the Obras Pias of the rent of the property for the period from the 20th of May to the end of the month by inserting in the contract with his tenants a provision that the rent should be payable in advance.

This court, in the decision above referred to, held, as a matter of fact and law, that Regidor

was not a possessor in good faith, and was bound to account to the plaintiff in that case for all rents received by him for some years prior to the entry of judgment. We do not see how this finding can affect the above declaration. As to Williams, Chandler & Co., the question of Regidor's good or bad faith is not important.

The plaintiff is entitled to the rent now in the hands of the defendants, and the payment made by them to the Obras Pias of the balance of the rent for the month of May was properly made.

The judgment of the court below is modified so as to provide that the plaintiff recover of the defendants the sum of \$216.66, money of the United States, with interest at the rate of 6 per cent per annum from the 16th day of May, 1903, and the costs of this action. No costs will be allowed in this court. After the expiration of twenty days let judgment be entered in accordance herewith, and the case remanded to the court of its origin for execution thereof. So ordered.

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

^[1] 2 Phil. Rep., 161.

^[1] Page 516, supra.