

[G.R. No. 1202. March 31, 1906]

**FRANCISCO SAEZ CO-TIONGCO, PLAINTIFF AND APPELLEE, VS. CO-QUING-CO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

This action was brought to recover rent under a contract of lease between the plaintiff and defendant, and also to recover the possession of the property. The contract of lease was executed and delivered on the 6th day of March, 1894. The period of the lease was ten years, to be counted from January 1, 1894. The action was brought on the 30th day of April, 1902, in the court of the justice of the peace of the city of Manila, and a judgment was rendered by said justice of the peace in favor of the defendant upon the ground that the plaintiff had not given the thirty days' notice to said tenant in accordance with the provisions of section 80 of the Code of Procedure in Civil Actions. From this judgment the plaintiff appealed to the Court of First Instance of the city of Manila,

On the 29th day of August, 1902, the plaintiff presented in the Court of First Instance in the city of Manila an amended complaint. Paragraph 3 of said complaint alleges—

“That the defendant has neglected, failed, and refused to comply with the conditions of said lease, in that he, the said defendant, did not pay the rent due plaintiff, as provided by article (b) of said lease, which stipulates that the sum of 50 pesos per month must be paid by the lessor at his house within the first ten days of the next month following.”

“That the defendant herein neglected, failed, and refused to pay said rent for the month of March, 1902, during said month, or within the first ten days of the next month following, as provided by said lease, and in truth and in fact did not offer

to pay said rent for the month of March aforesaid until after the beginning of suit by this plaintiff against said defendant in said justice's court on the 30th day of April, 1902, for possession of said premises."

The evidence discloses the fact that the rent for the month of March was not paid, either during the month or within the first ten days of the next month following. There was a default, therefore, in the payment of the rent on the 10th day of April, 1902. This action for the rent and recovery of possession of the property was brought on the 30th day of April of the same year. There is no proof that any notice whatever was given to the defendant in accordance with the provisions of section 80 of the new Code of Procedure. The plaintiff claims that the provisions of said section 80 do not apply to the contract in this case for the reason that the contract was made long before the time when said section 80 took effect; that the law in force at the time the contract was made is the law which governs an action upon this particular contract.

Article 1569 of the Civil Code provides that—

"The lessor may judicially dispossess the lessee for any of the following causes:

"First. Upon the expiration of the conventional period, or the one fixed for the duration of leases in articles 1577 and 1581.

"Second. Default in the payment of the price agreed upon."

Article 1555 of the Civil Code provides that—

"The lessee is obliged: First. To pay the price of the lease in the manner agreed upon."

Under the provisions of the law in force at the time of the making of this lease the lessor might request the rescission of the lease and judicial possession of the property immediately upon default in payment of the price agreed upon.

Section 80 of the Code of Procedure in Civil Actions in part provides that—

“The owner of land or of a building occupied by a tenant may likewise obtain restitution or possession of the premises, and recover rents due and damages in the manner next hereinafter provided, when the tenant for thirty days after due demand for payment of rent due for the occupancy of the premises shall have refused or neglected to make payment of the same.”

The question presented in this case is, Was it necessary for the landlord to give the tenant thirty days' notice before bringing his action in the court of the justice of the peace to obtain possession of the property for a breach, of any term of the contract of lease? We answer this question in the affirmative.

The plaintiff in this case might have brought his action of ejectment in the Court of First Instance of the city of Manila, which action, so far as the law is concerned, might have been brought immediately upon a breach of the terms of the lease. In this case certainly his rights would not have been affected by the provisions of section 80, above quoted. Section 80 only applies to actions of forcible entry and detainer brought in the court of the justice of the peace.

The judgment of the court below is therefore reversed and the cause dismissed, with costs to the plaintiff, without prejudice to the plaintiff to commence a new action to obtain judicial possession of the property. After the expiration of twenty days let final judgment be entered in accordance herewith, and ten days thereafter let the cause be remanded to the lower court for proper procedure.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.
