

7 Phil. 162

[G.R. No. 3078. December 07, 1906]

**FERNANDO PEREZ, PLAINTIFF AND APPELLEE, VS. JUAN GARCIA BOSQUE,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

On the 15th of January, 1904, the defendant, Bosque, sold to the plaintiff the house in question under an agreement that he should have the right to repurchase it at any time before the 31st day of March, 1905. It was stated in the agreement of sale that Bosque should occupy the house as a tenant until the 31st day of March, 1905, or until he repurchased it before that time, and that he should pay for such use and occupation 40 pesos a month. On the 24th day of August, 1904, the parties hereto made another contract, by the terms of which they canceled the contract of the 15th of January and the defendant sold to the plaintiff the house absolutely for 4,000 pesos. The instrument in which this contract appeared was a notarial document and it was duly recorded in the Registry of Property. On the same day the plaintiff signed a paper in which he gave to the defendant the right, until the 31st day of May, 1905, to repurchase the property. Nothing was said in either of these two agreements of the 24th of August as to the further occupation of the house. The defendant continued his occupation thereafter until the 31st day of May, 1905, when he abandoned it. He never exercised his right to repurchase. This action was brought to recover the sum of 580 pesos as rent for the house.

There was evidence offered to show that between the 15th day of January, 1904, and the 31st day of May, 1905, the defendant, Bosque, had paid three months' rent. One of the payments was evidenced by a receipt dated the 1st day of June, 1904, for the rent corresponding to that month. By the provisions of article 1110 of the Civil Code and of section 334, paragraph 9, of the Code of Civil Procedure this receipt was evidence that the prior rent had been paid. The defendant is liable for the rent from the 1st of July to the 24th of

August by the express terms of the contract of the 15th day of January. The contract of lease found in that document expired on the 24th day of August. Nothing having been said in the two contracts of that date in regard to the occupation of the house, and the defendant having occupied it for fifteen days after the termination of the original contract, there was an implied renewal of that lease in accordance with the provisions of article 1566 of the Civil Code. The defendant is, therefore, liable for the rent from the 24th day of August, 1904, to the 31st day of May, 1905, at the rate of 40 pesos a month.

As to the point made by the appellant, that execution was ordered to be issued by the court below in a manner not provided by law, it is sufficient to say that if the court committed error in that respect, it did not prejudice the substantial rights of the defendant upon the merits.

The judgment of the court below is affirmed, with the costs of this instance against the appellant.

After expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the record be remanded to the court below for proper action. So ordered.

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

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