

TORIBIO REYES, PLAINTIFF AND APPELLANT, VS. CALTEX (PHILIPPINES) INC., DEFENDANT AND APPELLEE.

G.R. No. L-1802. September 30, 1949

Ponente: TUASON, J.

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TUASON, J.:

This action was brought in the Court of First Instance of Rizal to annul a contract of lease and to recover Php.6,900.00 as rent. Judgment was for defendant.

The contract in question was executed on the 23rd day of December, 1940, whereby Toribio Reyes, the plaintiff, leased to Caltex (Philippines) Inc., the now defendant, two parcels of land situated in the barrio of Baclaran, Municipality of Paranaque, Province of Rizal, for a period of 10 years renewable for another 10 years at the option of the lessee, at the agreed monthly rental of Php.120.00 during the first 10 years and Php.150.00 a month for the subsequent period should the lease be extended, said monthly rental to be paid advance within the first 10 days of each month. The contract further provides in paragraph 6 that, "Should the structures on said premises be destroyed by fire or storm, or should LESSEE, for any reason, be prevented from establishing or continuing the business of distributing petroleum products on said premises, or should said business, for any reason, in LESSEE'S judgment, become unduly burdensome, LESSEE may terminate this lease upon thirty (30) days written notice, in which event the rental shall be prorated to the date of such termination."

Upon the entry of Japanese troops, in December, 1941, these seized the premises and used them throughout the period of occupation as a sentry post. The officers of the lessee corporation, being American citizens, were interned by the invaders and the said company was closed throughout that period. After liberation the lessee again took over the premises but tendered payment for rent from February, 1945, only; it had not paid rent from January, 1942.

This nonpayment is the basis of the present suit.

The trial court applied Art. 1554 and Art. 1575 of the Civil Code which read:

"ART. 1554. The lessor is obligated:

"1. To deliver to the lessee the thing which is the object of the contract.

"2. To make thereon, during the lease, all the necessary repairs in order to preserve it in serviceable condition for the purpose for which it was intended.

"3. To maintain the lessee in the peaceful enjoyment of the lease during all the time of the contract.

"ART. 1575. The lessee shall have no right to a reduction of the rent on account of the sterility of the land leased or on account of the loss of the fruits through ordinary fortuitous events; but he shall have said right in case of loss of more than one-half of the fruits through extraordinary and unforeseen fortuitous events, saving always a special agreement to the contrary.

"By extraordinary fortuitous events shall be understood fire, war, pestilence, extraordinary floods, locusts, earthquakes, or any other equally unusual events, which the contracting parties could not have reasonably foreseen."

Article 1575, it will be noted, deals with leases of agricultural land. The property in question is not devoted to agricultural uses but was leased for the express purpose of being used, as it was and is now being used, as gasoline stations. Moreover, there is no evidence that the lessee suffered a loss of more than one-half of the fruits thereof. Other requisites of the article are lacking. It is plain Art. 1575 has no bearing.

The applicable provision is Article 1560 in relation to Article 1554. Art. 1560 provides:

"ART. 1560. The lessor shall not be obliged to answer for the mere fact of a trespass made by a third person in the use of the thing leased, but the lessee shall have a direct action against the trespasser.

"The fact of trespass does not exist if the third person, whether he be an agent of the Government or a private individual, has acted by virtue of a right belonging to him."

Manresa (10 Código Civil Español, 4.a Edición) elucidates on the meaning of the term "mere fact of a trespass" (perturbación de mero hecho) as distinguished from legal trespass (perturbación de derecho) and treats of its legal effects, citing other noted writers. The comment so fits into the various phases of the present case and is so nearly wholly determinative thereof as to be worth quoting at length:

"El artículo preinserto (Atrículo 1560) guarda íntima relación el número 3.0 del 1.554. Dice este ultimo, que el arrendador está obligado a mantener al arrendatario en el goce pacifico del arrendamiento por toso el tiempo del contrato Ya con motive de este percepto dijimos que el arrendador debe procurar la integridad de este goce, no solo absentiéndose de errealizar hechos propios que lo mermen, sino evitando los ajenos que cospiren al mismo fin, salvo, dijimos entonces, lo que se establece en el artículo 1.560.

"Este es el memento de recoger aquella alusión que, al ser explicada, hará ver el sentido completo del num. 3.0 del articulo 1554.

"1. Clases de perturbación que pueden atentar al derecho del arrendatario. El art. 1.560, al declarar que el arrendador no esta obligado a responder de la perturbación de mero hecho que un tercero causare en el uso de la finca arrendada, aporta tácitamente una fundamental distinción la doctrina del arrendamiento, que conviene dejar incorporada a la misma como base sustancial de las soluciones que se formulen.

"Si el arrendador no responde de las perturbaciones de mero hecho, y si, no obstante este precepto de carácter marcadamente excepcional, debe mantener al arrendatario en el goce pacifico del arrendamiento, es visto que indudablemente responde de aquellas otras que no sean de mero hecho, de donde lógicamente se deduce la diferencia de los actos preservadores en actos de mero hecho y actos de derecho, diferencia que importa dejar claramente establecida, porque de ella parten las consecuencias que constituyen la entraña del articulo que comentamos.

"Qué entendemos por perturbación de mero hecho?, qué por perturbación de derecho?

"El Código francos, en su art. 1.725, dice que el arrendador no esta obligado a garantizar al arrendatario por las molestias causadas por terceros que no tengan derecho sóbrela cosa arrendada, sin perjuicio de las reclamaciones que el arrendatario pueda hacer en su propio nombre; y en el art. 1.726 que si, por el contrario, el inquilino o arrendatario ha sido molestado en su disfrute por consecuencia de inacción relativa a la propiedad del predio, tiene derecho una rebaja proporcional en el precio del arrendamiento, habiéndose denunciado aquella molestia al propietario.

"Parece deducirse de estos preceptos que la perturbación ocasionada por quien no tenga derecho sobre la cosa arrendada (aunque lo pueda ostentar sobre cosas distintas que con ella guarden relación), se debe estimar como

de mero hecho, y que aquella otra que consista en el ejercicio de una acción que afecte a la propiedad del predio, ha desconsiderarse como de derecho.

"Laurent, explicando estos preceptos, dice, que lo que caracteriza la perturbación de derecho, es que el tercero pretenda e afirme que la cosa arrendada no pertenece al arrendador. Sin embargo, añade, puede ocurrir que un tercero ejerciendo un derecho que le corresponda, perturbe el goce del arrendatario: este tercero no pretende tener ningún derecho sobre la cosa arrendada, y en este sentido no hay perturbación de derecho; el derecho en virtud del cual el arrendador ha arrendado no se ataca, y no obstante, el goce del arrendatario se perturba. Para poner en claro si en este ultimo supuesto el arrendador debe responder al arrendatario de la perturbación el autor citado distingue según que los actos perturbadores provengan de la Administración o de un particular.

"Si provienen de la Administración, habrá que distinguir nuevamente si esta ha obrado dentro del círculo de sus atribuciones, o si se extralimitó y el acto es ilegal: si ocurrió esto último, la respuesta no es dudosa para Laurent; un acto ilegal es una vía de hecho, y las vías de hecho no dan lugar a exigir responsabilidad al arrendador.

"En el caso contrario, esto es, que la Administración haya obrado dentro de sus facultades, el derecho del arrendatario para dirigirse contra el arrendador y su carencia de acción contra la Administración, son evidentes.

"Si los actos perturbadores provienen de particulares, Laurent hace la misma distinción que cuando proceden de la Administración, de si el particular ha obrado en el ejercicio de un derecho que le corresponde, o si se ha extralimitado de él: las soluciones que propone son idénticas y en virtud de los mismos fundamentos. De donde se deduce que no habla gran necesidad de distinguir entre actos de la Administración y actos de particulares, para llegar a tal resultado.

"Más adelante el mismo Laurent acoge las siguientes distinciones de Portier: hay perturbación de hecho cuando los terceros que la realizan no pretenden tener ningún derecho en el predio, ni con relación al predio, por ejemplo, si hacen pacer sus rebaños en la finca arrendada, aunque sin alegar que estén facultados para ello; es perturbación judicial, la que resulta de una demanda presentada ante los Tribunales; es perturbación judicial también, por vía de excepción, la que tiene lugar cuando al perseguir el arrendatario a los autores de una perturbación de hecho, estos oponen que tienen un derecho en la cosa arrendada.

"Pacifi Mazzoni enuncia la diferencia entre la perturbación de hecho y la de derecho, diciendo que la primera tiene lugar cuando disminuye o impide materialmente el goce del arrendatario, sin que el perturbador alegue derecho sobre la cosa ni sobre su disfrute, y la segunda, si tiende al mismo fin, bien con actos judiciales, bien con actos extrajudiciales con los que se contesta el derecho de arrendatario al disfrute aduciendo pretensiones de derecho sobre la cosa.

"Ricci señala dos requisitos a las molestias de hecho para que sean a cargo del arrendatario primero, que el que la cause no ostente ningún derecho sobre la cosa arrendada, y segundo, que tampoco tenga derecho a realizar aquello en que la molestia o perturbación consiste; faltando alguno de estos dos requisitos la perturbación es de derecho.

"Nuestro Goyena, comentando el art. 1.491 del proyecto de 1851, dice que en ningún contrato hay responsabilidad por los casos fortuitos, y tal debe reputarse la turbación de mero hecho, como si se introducen rebaños ajenos en el prado que tengo en arriendo, o se me arrebatan de noche los frutos, o se me expelen violentamente de la casa que ocupo. Mas adelante añade, que mientras el ataque no se dirija contra la propiedad misma de la cosa y judicialmente, el arrendatario es el solo atacado y a él sólo toca defenderse.

"Nuestro Código no define concretamente qué es lo que se entiende por perturbación de mero hecho. Únicamente en el párrafo segundo del artículo que comentamos, viene a dar una nota negativa de la misma, diciendo que no existe perturbación de hecho cuando el tercero, ya sea la Administración, ya un particular, ha obrado en virtud de un derecho que le corresponde. Esta nota, a un que negativa, es bastante más amplia y

comprehensiva, por ejemplo, que los conceptos que aparecen en los artículos 1.725 y 1.726 del Código francos, porque al referirse a un derecho que al tercero corresponda, no restringe el sentido o la significación de un derecho en la cosa arrendada, ni mucho menos a un derecho de propiedad sobre la misma cosa, Basta que el tercero haya obrado en virtud de un derecho, sea cual fuere, para que la perturbación no se pueda considerar de las de hecho.

"Entresacando de las distinciones hechas por los autores aquellas que se presentan como sustancialmente diferentes, puede decirse que el tercero que realíza los actos que se dicen perturbadores del goce del arrendatario, puede obrar de una de estas tres maneras: primera, arbitrariamente; segunda, estimando que la cosa arrendada es de su propiedad o que tiene en ella algún derecho, y tercera, creyendo que la cosa es realmente del arrendador, no alegando derecho alguno sobre ella, pero considerando que con el acto realizado no se atenta en lo más mínimo al derecho ajeno, sino que, antes por el contrario, se ejercita uno propio de muy distinta esfera de acción.

"El primer modo es el modo brutal de las vías de hecho; es, no solo la perturbación de hecho, sino la de mero hecho a que alude el párrafo primero del artículo que comentamos puesto que el que la ejecuta para nada invoca los motivos jurídicos que puedan asistirle, lejos de ello reconoce que tales motivos no existen.

"La segunda y la tercera manera no pueden merecer igual calificación. Poco importa que el derecho de que se crea asistido el perturbador haga relación a la cosa misma arrendada, o se estime por el que entiende ejercitarlo que recae sobre objeto distinto que le corresponde una órbita de acción que ningún punto de contacto tiene con la de los derechos del arrendador y del arrendatario, al cabo el que perturba no obra arbitrariamente, en su conciencia se da la raíz jurídica de sus actos, y, siendo esto así, no procede calificar estos de actos de perturbación de mero hecho. Implican, pues, una perturbación de derecho.

"Apreciada la cuestión desde este punto de vista, obsérvese el manifiesto error en que incurrió García Goyena cuando decía que, mientras el ataque no se dirija contra la propiedad de la cosa y judicialmente, el arrendatario es el sólo atacado y al61 solo toca defenderse, como dando a entender que los ataques extrajudiciales merecen todos el calificativo de perturbaciones de mero hecho. El que la perturbación sea o no judicial, implica únicamente una cuestión de forma que no afecta al fondo del acto; los derechos pueden ejercitarse de muchas maneras: no es ciertamente acudiendo a los Tribunales el único modo de su ejercicio, y ya hemos dicho que siempre que el perturbador entienda usar de un derecho no puede calificarse la perturbación de mero hecho.

"Parécenos, por otra parte, que nuestro criterio es el que mas concuerda con el del Código, al afirmar4ste que no existe perturbación de hecho cuando el tercero ha obrado en virtud de un derecho que le corresponde, y no distinguir, como ya hemos indicado, de clases de derecho. Pero, nótese bien, que el Código no exige expresa ni tácitamente el requisito de que la perturbación sea judicial para que deba tenerse como perturbación de derecho.

"Bajo las bases apuntadas que tenemos por ciertas, y amoldándolas al precepto del art. 1560, haremos algunas aclaraciones para facilitar la inteligencia de la ley en esta materia.

"El arrendatario, aunque posea en nombre propio su derecho de arrendamiento, posee la cosa arrendada en nombre del arrendador. De aquí que, todo tercero que tenga que reclamar algún derecho sobre la cosa arrendada, deba dirigirse contra el arrendador.

"EL arrendatario, como dice el Código de Chile, solo esta obligado a poner en conocimiento del arrendador cualquiera perturbación o molesta que reciba de dichos terceros, por consecuencia de los derechos que pretendan tener. Así, pues, toda perturbación de hecho, o consistente en hechos, en cuanto afecte o pueda afectar al derecho sobre la cosa arrendada, y aun sólo a su uso o disfrute, no puede ser repelida por el arrendatario, queda fuera de su esfera de acción.

"Aparte de esas perturbaciones, aun de hechos o consistentes en hechos, de las que no se ocupa el artículo,

éste, refiriéndose también a perturbaciones de hecho, distingue dos grupos, bajo la base, también esencial, de afectar al uso de la finca arrendada, se tique el que realice la perturbación, sea un particular o sea la Administración, obre desde luego en virtud de un derecho que le corresponde, o sin corresponderle derecho alguno, ni pretenderlo. En el último caso el arrendatario tiene acción directa contra el perturbador; la perturbación es arbitraria de mero hecho, porque no afecta en nada al derecho sobre la cosa. En el primero no existe verdadera perturbación, como expresamente declara la ley, puesto que se ejercita un derecho propio, que lomismo el arrendador que el arrendatario tiene que respetar. El arrendatario tiene que conformarse con la molestia que se le ocasione, pudiendo o no reclamar algo contra el arrendador, según los casos."

The trespass in our case was in no way imputable to the lessor or to any defect in the title to the property. At best, it was a fortuitous circumstance; regardless of any other consideration it was a fact that there was no gasoline or any other oil products to sell or distribute; at the worst, the occupancy of the premises by the Japanese was motivated by the nationality of the lessee. In neither case was the lessor to blame, and the lessee can not evade payment of the rent. From whatever angle we look at the case we cannot avoid the conclusion that the stoppage of the defendants business was a "perturbación de mero hecho." It sprang from an impossibility in fact, not one inherent in the nature of the thing to be performed. It is not true, as alleged, that the lessor refused or neglected to give defendant possession of the property. He did not in any way interfere with the lessee's possession, which it was enjoying when war broke out. He did not did here occupy the premises nor did he give them to the Japanese. Under the circumstances, as between the lessor and the lessee the latter must shoulder the loss resulting from the Japanese seizure. Lessee's remedy is against the Japanese.

As Goyena says, according to Manresa, *supra*, "en ningún contrato hay responsabilidad por los casos fortuitos, y tal debe reputarse la turbación de mero hecho, como si se introducen rebaños ajenos en el prado que tengo en arriendo, o se me arrebatan de noche los frutos, o se me expele violentamente de la casa que ocupo." Manresa disagrees with Goyena's opinion, "que mientras el ataque no se dirija contra la propiedad misma de la cosa y judicialmente, el arrendatario es el solo atacado y a el solo toca defenderse" Manresa contends, correctly, we think, that the attack need not be made through judicial proceedings to produce the effect of relieving the obligor of the assumed obligation. But the disturbance in the case at bar did not grow out of any assertion or pretense of paramount title or of any right antagonistic to that of the lessor. Goyena's opinion which Manresa criticizes does not therefore concern us. On the other hand, this opinion goes to show that there are reputable authorities in civil law who would go farther than Manresa and others in restricting the lessor's liability for trespasses on the leased property.

Looking for precedents of our own we find that this Court, speaking through Mr. Chief Justice Arellano in *Goldstain vs. Roces*, Phil. 562, has laid down this rule: "Si el hecho perturbador no va acompañado ni precedido de nada que revele una intención propiamente jurídica en el que lo realiza, de tal suerte que el arrendatario solo pueda apreciar el hecho material desnudo de toda forma o motivación de derecho, entendemos que se trata de una perturbación de mero hecho."

English and American decisions sustain the plaintiff's theory in respect of the obligation of the lessee to parent in cases analogous to this. As these cases are grounded, we believe, on the same principle which underlies the provisions of the Civil Code on the subject of lease, we will briefly refer to them.

In *Paradin v. Jane*, Alyn, 26, an English case, the lessee defended the action on a covenant to pay rent on the ground that, during the civil wars of England, prince Rupert, an alien born, with a hostile army, had driven him out of the premises. The court overruled the plea.

In *Pollard vs. Shaefer*, 1 Dall. (Pa.) 210, the lessee defended against an action for rent, upon the ground that he was deprived of the use of the premises by an alien enemy, namely the British, but the court followed the

principle announced in *Paradin vs. Jane*, supra, and held the lessee liable for the entire rent. The principle upon which the court based its decision was (1) that the covenant to pay the entire rent was express; and (2) that since, by the lease, the lessee was to have the advantage of casual profits of the leased premises, he should run the hazard of casual losses during the term and not lay the whole burden of them upon the lessor.

See also the more recent cases of *Hasley vs. Lowenhill* (1916), 2 K. B. (Eng.) 707; *London and Northern Estates Co. vs. Schlessinger* (1916), 1 K. B. 20.

The general rule on performance of contracts is graphically set forth in American treatises, which is also the rule, in our opinion, obtaining under the Civil Code.

Where a person by his contract charges himself with an obligation possible to be performed, he must perform it, unless its performance is rendered impossible by the act of God, by the law, or by the other party, it being the rule that in case the party desires to be excused from performance in the event of contingencies arising, it is his duty to provide therefore in his contract. Hence, performance is not excused by subsequent inability to perform, by unforeseen difficulties, by unusual or unexpected expenses, by danger, by inevitable accident, by the breaking of machinery, by strikes, by sickness, by failure of a party to avail himself of the benefits to be had under the contract, by weather conditions, by financial stringency, or by stagnation of business. Neither is performance excused by the fact that the contract turns out to be hard and improvident, unprofitable or impracticable, ill advised, or even foolish, or less profitable, or unexpectedly burdensome." (17 C.J.S. 946-948.)

In the absence of a statute to the contrary, conditions arising from a state of war in which the country is engaged, ill not ordinarily constitute an excuse for non performance of contract; and impossibility of performance arising from the acts of the legislature and the executive branch of government in war time does not, without more, constitute an excuse for nonperformance. (17 C.J.S. 953, 954.)

A few words are in order to straighten out the apparent confusion that exists regarding the influence of fortuitous events in contracts; when they excuse performance and when not.

In considering the effect of impossibility of performance on the rights of the parties, it is necessary to keep in mind the distinction between (1) Natural impossibility, preventing performance from the nature of the thing; and (2) impossibility in fact, in the absence of inherent impossibility in the nature of the thing stipulated to be performed. (17 C.J.S. 951.) In the words of one Court, impossibility must consist in the nature of thing to be done and not in the inability of the party to do it. (*City of Montpelier v. National Surety Co.*, 122 A. 484, 97 Vt. 111, 33 A.L.R. 489.) As others have put it, to bring the case within the rule of impossibility, it must appear that the thing to be done cannot by any means be accomplished, for if it is only improbable or out of the power of the obligor, it is not in law deemed impossible. (17 C.J.S. 442.) The first class of impossibility goes to the consideration and renders the contract void. The second, which is the class of impossibility that we have to do here, does not. (17 C.J.S. 951, 952.)

For illustration, where the entire product of a manufacturer was taken by the government under orders pursuant to a commandeering statute during the World War, it was held that such action excused nonperformance of a contract to supply civilian trade. (40 S. Ct. 5, 253 U.S. 498, 64 L. ed. 1031.) Another example: where a party obligates himself to deliver certain things and the things perish through war or in a ship-wreck, performance is excused, the destruction operating as a rescission or dissolution of the covenant. But if the promisor is unable to deliver the goods promised and his inability arises, not from their destruction but from, say, his inability to raise money, to buy them due to sickness, typhoon, or the like, his liability is not discharged. In the first case, the doing of the thing which the obligor finds impossible is the foundation of the undertaking. (C.J.S. 951, note.) In the second, the Impossibility partakes of the nature of the risk which the promisor took within the limits of his

undertaking of being able to perform. (C.J.S. supra 946, note.) It is a contingency which he could have taken due precaution to guard against in the contract.

Summoning the above principles to our aid, and by way of hypothesis, the defendant appellee here would be relieved from the obligation to pay rent if the subject matter of the lease, were this possible, had disappeared, for the personal occupation of the premises is the foundation of the contract, the consideration that induced it (lessee) to enter into the agreement. But a mere trespass with which the landlord had nothing to do is a casual disturbance not going to the essence of the undertaking. It is a collateral incident which might have been provided for by a proper stipulation.

There is one factor in this case which immeasurably strengthens the position of the lessor. It is the fact that the long-term contract gives the lessee the right to terminate the lease at any time. The lessee could have put an end to the contract if it believed that the same was proving unprofitable or burdensome but far from rescinding the lease it resumed business on the same premises and will, in all probability, continue to do so for the rest of the 20 years. The mere recital of this situation reveals the unfairness of the lessee's stand. It wants to hold on to the contract for the rest of its long life, paying rent that was fixed on pre-war standards, but would not assume the casual loss occasioned by a temporary paralyzation of its business.

We do not agree however with plaintiff that the nonpayment of rent worked to rescind the contract. The failure of the defendant to pay rent during the war was due to impossibility inherent in the nature of the thing to be performed. In this aspect of the contract the payment was the very thing promised by the lessee, the very foundation, the sole consideration of the contract for the lessor and the lessee's failure to make good the promise was due to causes over which it had no control and for which it was in no manner at fault. The war led to its officers' incarceration or internment and prevented them from receiving cash from their principal or from working to earn money. There is no difference in the animating principle involved between this case and that of a promisor who is unable to fulfill a promise to sell a house because the house was burned down.

It will perhaps be contended that after liberation the defendant was in a position to pay the rent in arrears and yet did not do so. This failure, in our opinion, should not operate as a forfeiture of the right of the lessee under the contract. Its refusal was not due to any notion of bad faith but to an honest belief that it was not under obligation today. This claim for exemption can not be dubbed frivolous in the face of the fact that the lower court sustained it and of the vehemence with which the proposition is urged by counsel upon us.

The judgment of the lower court is reversed as to the obligation of the defendant to pay rent from December, to the date preceding the first payment after January. The decision is affirmed regarding the prayer to rescind the contract. There will be no special pronouncement as to costs in either instance.

Moran, C. J., Ozaeta, Feria, Bengzon, Padilla, Montemayor, Reyes, and Torres, JJ., concur.

DISSENTING

PARAS, J.:

Under article 1554 of the Civil Code, the lessor is obligated not only "to deliver to the lessee the thing which is the object of the contract," but also "to maintain the lessee in the peaceful enjoyment of the lease during all the time of the contract." Upon the other hand, under article 1555 of the same code, the lessee is bound "to pay the price of the lease in the manner agreed upon." These two articles mark out the essential rights and obligations of the lessor and the lessee. The right of the lessor to collect the stipulated rental is contingent upon the ability to

maintain the lessee in peaceful and continuous possession, whereas the right of the lessee to keep this rentals. It is my conviction that, after the herein defendant-appellee had lost possession of the leased land due to the fact that the Japanese forces seized the same in December, 1941, and continuously used it as a sentry post during the entire period of the military occupation, and that the officers of the defendant-appellee were interned, the latter should be excused from paying the rentals for the period of its dispossession. This is simple justice.

It is true that the plaintiff-appellant cannot be blamed for the ejection of the appellee by the Japanese, but this circumstance merely releases the appellant from any liability for damages resulting to the appellee. It cannot warrant the collection by him of the rentals during the period the appellee, without fault, was not "in the peaceful enjoyment of the lease."

The majority have invoked article 1560 of the Civil Code to the effect that "the lessor shall not be obliged to answer for the mere fact of a trespass made by a third person in the use of the thing leased, but the lessee shall have a direct action against the trespasser." They hold, in effect, that because "the disturbance in the case at bar did not grow out of any assertion or pretence of paramount title or of any right antagonistic to that of the lessor," and is accordingly a "perturbacion de mero hecho," as distinguished from "perturbacion de derecho," the appellant is entitled to collect, and the appellee is obligated to pay, the rentals for the period during which the leased land was occupied by the Japanese forces. This is an error. In the first place, article 1560 expressly refers to disturbance by third persons for which the lessor cannot be held liable for damages, but which does not necessarily authorize the lessor to enforce the payment of rents when the lessee is dispossessed. The appellee undoubtedly had suffered considerable damages by reason of the seizure by the Japanese forces of the land in question, and it is only in view of article 1560 that the appellant cannot be held liable for said damages. In the second place, even if said article applies to disturbances that will permit the lessor to collect rentals, said disturbances are only those arising from war. This is clear from the fact that article 1560 provides that the lessee shall have a direct action against the trespasser. In the case before us, the herein appellee could not have had a direct action against the military occupant. In other words, the disturbances contemplated in article 1560 are those occurring during normal times when the lessee can avail himself of ordinary legal remedies.

With respect to rural leases, article 1575 of the Civil Code concedes to the lessee a reduction of rent in case of loss of more than one half of the fruits through war and other extraordinary fortuitous events. While this provision is applicable only to rural leases, we find no plausible reason for not adopting, as to urban leases, the fundamental principle of equity therein embodied, especially in view of the injunction in article 6 of the Civil Code that when there is no statute exactly applicable to the point in controversy, "the custom of the place shall be applied, and in the absence thereof, the general principle of law." At any rate we have the express rule that "no one shall be liable for events which could not be foreseen or which, even if foreseen, were inevitable, with the exception of the cases in which the law expressly provides otherwise and those in which the obligation itself imposes such liability." (Article 1105, Civil Code.)

Very recently, the Court of Appeals decided a case wherein it held that the lessee is not liable for the rents of a house which was occupied by the Japanese during the war. The lessor appealed by certiorari but we dismissed the petition summarily in a minute resolution promulgated on March 7, 1949 (L-2797, Reyes vs. Formoso), for we were of the unanimous opinion that the doctrine was sound and good. The decision in the case at bar is a sudden and unwarranted reversal.

I therefore vote for the affirmance of the appealed judgment.

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