

ANTONIO CO TIAMCO, PETITIONER, VS. HON. POMPEYO DIAZ AS JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, YAO BOOM SIM (ALIAS CO HUE), YAO KA TIAM (ALIAS CHUA KUI) AND SY GUI GAM ...*G. R. No. L-7. January 22, 1946*

Ponente: MORAN, C.J.

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Antonio Co Tiamco filed an action in the municipal court of Manila against Yao Boom Sim (alias Co Hue), Yao Ka Tiam (alias Chua Kui), and Sy Gui Gam (alias Go Si Pio) for unlawful detainer of the building located at 503 Sto. Cristo, Street, Manila. In the trial, plaintiff offered Exhibit A as evidence, which is a notice to quit alleged to have been served upon defendants prior to the action. Objection was made to the evidence upon the ground that the fact sought to be proved thereby was not alleged in the complaint. The objection was sustained, and an action for mandamus was brought by plaintiff to the Court of First Instance of Manila. The writ of mandamus was granted, and when the trial was resumed in the municipal court, the evidence was admitted. After trial, judgment was rendered against defendants who appealed to the Court of First Instance. The notice, Exhibit A, was a part of the record elevated on appeal. In the Court of First Instance, the complaint filed in the municipal court was reproduced. Defendants filed a motion to dismiss upon the ground that there was no allegation in the complaint of a notice to quit or vacate the premises served upon them prior to the action and, therefore, the municipal court had no original jurisdiction over the subject-matter of the action and, as a consequence, the Court of First Instance had no appellate jurisdiction to try and decide the case. The motion was sustained and the case dismissed. Hence, this action for mandamus against the Court of First Instance of Manila to reinstate the petitioner's case.

We believe, and so hold, that the order of dismissal is erroneous on the following grounds: (1) It relies on a wrong construction of the Rules of Court; (2) it is unwarranted under the circumstances of the case: and (3) the complaint filed is sufficient in itself.

1. We will begin by reviewing the construction placed by the respondent court on a provision of our Rules of Court. The position taken by the respondent court is that, in all actions for unlawful detainer by a landlord against a tenant, a demand, as required by Rule 72, section 2, is jurisdictional. Such provision of the Rules is as follows;

"Landlord to proceed against tenant only after demand. — No landlord, or his legal representative or assign, shall bring such action against a tenant for failure to pay rent due or to comply with the conditions of his lease, unless the tenant shall have failed to pay such rent or comply with such conditions for a period of fifteen days, or five days in the case of building, after demand therefor, made upon him personally, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no persons be found thereon." (Italics ours)

It is apparent from this provision that a demand is a pre-requisite to an action for unlawful detainer, when the action is "for failure to pay rent due or to comply with the conditions of his lease," and not where the action is to

terminate the lease because of the expiration of its term. This is in conformity with articles 1565 and 1581 of the Civil Code:

"ART. 1565. If the lease has been made for a fixed period, it expires on the day fixed without put the necessity of any notice." (Italics ours).

"ART. 1581. If no term has been fixed for the lease, it shall be understood as from year to year when an annual rent has been fixed, from month to month when the rent is monthly, and from day to day when it is daily.

"In every case the lease ceases, without the necessity of a special notice, upon the expiration of the term." (Italics ours.)

A lease ceases upon the expiration of its term without the necessity of any notice^[1] to the tenant who thenceforth becomes a deforciant withholding the property unlawfully "after the expiration or termination of the right to hold possession by virtue of any contract, express or implied," as provided in Rule 72, section 1. In other words upon the expiration of the term of a lease, the landlord may go into the property and occupy it, and if the lessee refuses to vacate the premises, an action for unlawful detainer may immediately be brought against him even before the expiration of the fifteen or five days provided in Rule 72, section 2.

Indeed, upon the expiration of the lease, there may be a tacit renewal thereof (*tácita reconducción*), as when, with the acquiescence of the lessor, the lessee continues enjoying the thing leased for fifteen days, as provided in Article 1566 of the Civil Code; and the lessor's acquiescence may be inferred from his failure to serve a notice to quit. (10 Manresa, Código Civil, 619). But tacit renewal, in such case, being a new contract (10 Manresa, Código Civil, p. 619), is a matter of defense which may be alleged by defendant in his answer, no allegation being necessary in the complaint by way of anticipation of such defense. (*Canfield vs. Tobias*, 21 Cal. 349).

2. Passing now to the facts of the case before us, we find that there has been in that case a notice to quit, though not specifically pleaded in the complaint. That notice, which is Exhibit A, has been, offered and admitted in the municipal court as evidence. And even supposing, without conceding, that the complaint is deficient in that regard, the deficiency was cured by evidence. True that this evidence was admitted upon objection of the defendant. But there is nothing wrong in that admission even applying Rule 17, section 4, which is as follows;

"Amendment to conform to evidence. — When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence." (Italics supplied).

Under this provision, when evidence is offered on a matter not alleged in the pleadings, the court may admit it even against the objection of the adverse party, where the latter fails to satisfy the court that the admission of the evidence would prejudice him in maintaining his defense upon the merits, and the court may grant him a continuance to enable him to meet the new situation created by the evidence. Of course, the court, before allowing the evidence, as a matter of formality, should allow an amendment of the pleading, and the municipal court did not do so in the instant case. Since, however, the municipal court is not one of record, the rule on amendments should not therein be rigidly applied. And, furthermore, where the failure to order an amendment does not appear to have caused surprise or prejudice to the objecting party, it may be allowed as a harmless error. Well-known is

the rule that departures from procedure may be forgiven where they do not appear to have impaired the substantial rights of the parties. (Rule 52, section 3; *Alonso vs. Villamor*, 16 Phil. 315; *Banco Español Filipino vs. Palanca*, 37 Phil. 921).

It is true that when the case was dismissed by the respondent court, it was there on appeal and for trial de novo, independently of any evidence that, had been presented in the municipal court. But the admissibility of the notice to quit as evidence, should have been considered by the respondent court as a closed question in so far as its jurisdiction was concerned, for it was one of the branches of that court which, in an action for mandamus, issued a writ compelling the municipal court to admit the evidence. The jurisdiction of the court to issue the writ was never questioned. The judgment rendered by the court in such action had become final, the appeal taken therefrom having been dismissed by the court. And that judgment was executed by the municipal court by admitting the evidence then in question. All these circumstances were within the knowledge of the respondent court at the time it acted upon the motion to dismiss. It may be argued that, as a general rule, mandamus does not lie to control rulings on questions of evidence in order not, to delay the trial of cases and because the proper remedy is appeal. But, when the writ has been issued and has become final and has been obeyed, it is perfectly valid and should be respected. Specially is this so in the instant case where, as will be shown later, the complaint filed was sufficient and under its allegations the municipal court was bound to admit the evidence.

We, therefore, believe and so hold that the respondent court-having judicial knowledge of the mandamus proceedings was in duty/bound to give due regard and full weight to the final and executed judgment therein rendered, and, had it done so, it would have found that the supposed deficiency of the complaint pointed out in the motion to dismiss had already been supplied by evidence admitted by order of one of its branches; that the curative evidence was already before it as a part of the record elevated on appeal by the municipal court; and that to throw away the whole case only because the complaint was silent on a fact well known to all the parties and to the court, was certainly to defeat the paramount interests of justice for the sake of a useless technicality. It was a useless technicality, because if the purpose of the pleading is to apprise the adverse party and the court of the essential facts, that purpose is sufficiently accomplished once the court and the adverse party have acquired a judicial knowledge of the real issues. Rules of pleadings are intended to secure a method by which the issues may be properly laid before the court. When those issues are already clear before the court, the deficiency in the observance of the rules should not be given undue importance. What is important is that the case be decided upon the merits and that it should not be allowed to go off on procedural points. The new rules are really simple and liberal and, in the language of Professor Sunderland, "the purpose which they seek to accomplish is to eliminate technical matters by removing the basis for technical objections, to make it as difficult as impossible, for cases to go off on procedural points, and to make litigation as inexpensive, as practicable and as convenient, as can done." (Vol. XIII *University of Cincinnati Law Review*, 1939 [No. 1], p. 1).

We conclude, therefore, that the dismissal of the action is unwarranted under the peculiar circumstances of the case.

3. But we prefer to base our decision not alone upon the peculiarities of the case but upon an important rule of policy. We, hold that the complaint filed with the municipal court is sufficient. It reads as follows:

"Plaintiff alleges -that defendants unlawfully withhold from him the possession of the building located at No. 503 Sto. Cristo St., Manila.

"Wherefore he prays that he be restored to the possession of said premises, with damages and costs.

"Manila, 20 April 1945."

This complaint is almost a verbatim copy of Form No. 1 of the Rules of Court, which in turn is a copy of the form

provided in section 81 of our former Code of Civil Procedure. The form as provided in the Rules is as follows:

"FORM 1.— Complaint for Ejectment.

"Plaintiff alleges that defendant has unlawfully turned him out of possession (or unlawfully withholds from him the possession, as the case may be) of certain lands and building (here describe the premises), situated in the municipality of _____

"Wherefore, he prays that he be restored to the possession of said premises, with damages and costs."

Substantial compliance with this form is sufficient according to the Rules. The complaint filed in the municipal court is not only a substantial, but almost a literal, compliance with the form. It has been held that:

"A complaint in unlawful detainer, before a justice, substantially in the form, given in Rev. St. p. 780, is sufficient." (Cabanne vs. Spaulding, 14 Mo. App. 312).

"That a statement in unlawful detainer in justice court, which is in the form given in Rev. St. 1880, p. 2262, and Rev. St. 1855, Append., is sufficient, is stare decisis." (Bradford vs. Tilly, 65 Mo. App. 181; 2 Mo. App. Rep'r 1204).

"A complaint setting forth a charge of unlawful entry and detainer in the language of the statute is sufficient." (Armour Packing Co. vs. Howe, 75 P. 1014, 68 Kan. 663.)

"Complaint in a forcible entry and detainer is sufficient if substantially in the words of the statute." (Locke vs. Skow, 91 N. W. 572, 3 Neb. [Unof.], 299).

"The complaint need not state the particular facts relied upon to constitute the alleged forcible entry or forcible detention, but it is sufficient if it contains the language of the statute." (Rice vs. West, 33 P., 706, overruled.—[1897] Richardson vs. Penny, 50 P. 231, 6 Okl. 328; [1903]; Greenameyer vs. Coate, 72 P..377, 12 Okl. 452).

"In a summary action under Code Civ. Proc. section, for the possession of land, plaintiff need not set but facts constituting his cause of action, the complaint being sufficient where it follows the language of the statute;" (Blachford vs. Frenzer, 44 Neb. 829, 62 N. W., 1101).

"In forcible entry or detainer, it is not necessary for the complaint to contain a statement of the particular facts relied on to constitute the alleged forcible entry or detention, but the complaint is sufficient if it is in the language of Wilson's Rev. & Ann. St. 1903, section 5090, relating to such action." (Schlegel vs. Link, 105 P. 652, 25 Okl., 263).

In: Roque vs. Logan (40 Off; Gaz. [No. 14], 10th Supp., p. 56), in which damages were not alleged in the body of the complaint but merely in the prayer, the Court, relying upon the form provided in section 81 of the former Code of Civil Procedure, held the complaint to be sufficient. In another case (Aguilar vs. Cabrera and Flamiño, G. R. No. 49129), for illegal detainer, wherein the complaint was made to conform to Form No. 1 of the Rules, this Court issued a writ of mandamus compelling the municipal court to try and decide the case, thus impliedly upholding the sufficiency of the form. Upon the other hand, no case—Filipino or American—has been cited to us holding the view that such form, or a similar one, is not sufficient in actions for forcible entry or unlawful detainer. This form has been a part of our statutes for more than forty years and has been used extensively in the provinces, as is the observation of members of this Court who had been trial judges in the provinces for years, and its sufficiency has never been questioned until now, and now precisely when it is more in consonance with the tendency of modern procedure which is to liberalize the rules of pleadings so as to preclude the failure of actions upon mere technicalities of form

Our attention is invited to the ruling of this Court in Gumiran vs. Gumiran (21 Phil. 174, 179), wherein it was held

that "it is a general rule of pleading and practice that in all pleadings filed in courts of special jurisdiction, the special facts giving the court jurisdiction must be specially alleged and set out." But the complaint in said case merely alleged that "the plaintiff has been 'deprived' of the land of which he is and has been the owner for a long period," and, therefore, is not in accord with the form provided by the Rules. One may be deprived of possession without force and there is no forcible entry; but when plaintiff is alleged to have been turned out of possession by defendant, as is the allegation contained in the form, force is implied (*Mediran vs. Villanueva*, 37 Phil. 752, 756), and the complaint is sufficient.

The syllabus in the case of *Melliza vs. Towle and Mueller* (34 Phil. 345, 346) is also relied upon. But the complaint in such case does not allege, according to the very language of this Court, "that possession was unlawfully withheld after the expiration or germination of the right to hold possession by virtue of a contract, or in any other manner required by section 80" (of the former Code of Civil Procedure), and, evidently, is not in conformity with the form.

The rule laid down in *Tengco vs. Jocson*, (43 Phil. 715), applicable in election cases, has no application in actions for forcible entry or illegal detainer. The concurring opinion of Mr. Justice Street in *Gonzalez vs. Salas*, (49 Phil. 1), and the ruling laid down in *Lizo vs. Carandang*, (2 Off. Gaz. [No. 3], March, 1943), are correct, for there is no doubt that a complaint is sufficient where it shows the facts sustaining the action for forcible entry or illegal detainer. There is, however, nothing in said opinion or in said ruling showing the insufficiency of the form here in question.

There is no fairness in holding a form to be insufficient after all the litigants were told by our Rules to follow it. It is said that a form is but an illustration, a guide, or an outline containing a general idea of what may be done. But obviously, it cannot be a good illustration when it leaves something in the dark. It cannot be a right guide when it misguides. And it cannot be an honest outline when it is incomplete and is deceitful. A form provided by law is a part of that law and, as such, it must be respected, regardless of what we might desire as to how it should be. After all, our duty is to construe the law and not our will, for in administering the law we have no will but the will of the law. In the instant case, the form provided by the Rules is not a figment of the mind but a practical expression of a fundamental policy. It discloses that in an action for forcible entry a simple allegation in the complaint that defendant turned the plaintiff out of possession is sufficient, for, undoubtedly, the words "turned out" imply force in the taking of the possession. (*Mediran vs. Villanueva*, 37 Phil. 752, 756). And in an action for unlawful detainer, a simple allegation that defendant is unlawfully withholding possession from plaintiff is made sufficient, for the words "unlawfully withholding" imply possession on the part of the defendant, which was legal in the beginning having no other source than a contract, express or implied, possession which has later expired as a right and is being withheld by defendant. Thus, a form of a pleading is devised which is brief and concise, and though apparently too general, it is so worded as clearly to apprise the defendant of the substance of the claim. Other details like the one-year period within which the action should be brought, and the demand when required to be made by the Rules, must be proved but need not be alleged in the complaint.

It is true that, according to Rule 4, section 3, the complaint in an inferior court shall state "the grounds of action, 11 but no other facts are required in the form to be stated aside from those that are already therein stated, which are thus deemed sufficient grounds for action. In this connection, it must be observed that when a form provided in the Rules is required to be supplemented by additional facts, the form itself says so by appropriate words enclosed in parenthesis. See, for instance, form No. 3, third paragraph; form No. 4, third paragraph; form No. 7, on third-party complaint, and others. But form No. 1, for complaint in forcible entry or illegal detainer cases, requires no additional statement of facts, except the description of the premises and the name of the municipality where the property is located.

The principle underlying the brevity and simplicity of this form of pleading rests upon considerations of public policy. Cases of forcible entry and detainer are summary in nature, for they involve perturbation of social order which must be restored as promptly as possible and, accordingly, technicalities or details of procedure which may cause unnecessary delays should carefully be avoided. And these cases are to be tried and decided by justice of the peace or municipal courts who are in close contact with the masses. Simple and practical methods of procedure should be afforded these masses so that they may not fail through their ignorance in obtaining a just redress for their grievances. Poor and ignorant people living in distant barrios and towns and peacefully enjoying their small pieces of land and homes, may be driven out of their property and deprived thus of the necessities of life by unscrupulous and violent individuals, and they may come for protection to the courts of the town completely unaided either because there are no lawyers in the locality or because they have no means to employ the services of such lawyers. By the quality of attention which they may receive in said courts will they learn whether this government is also their own or only of the powerful, rich or intellectual. Moreover, there can hardly be one case out of a hundred which is so fictitious that the defendant is not aware of the trouble complained of, particularly in this kind of cases and in small communities. It is for these reasons that a simple pleading containing a single ultimate fact is made sufficient to inform the defendant of the nature of the action and to move the court into a prompt investigation of the facts with a view to a quick restoration of the public order perturbed. If, in a singular case, the defendant may not fairly prepare his answer or defense because of the form of the pleading, he may ask for more particulars by discovery through deposition (Rule 18 in connection with Rule 4, section 19), or he may very well wait for the trial and listen to plaintiff's testimony on details and then ask for a short postponement to prepare his defense, a petition which would not be denied if duly justified.

We have conscientiously weighed the reasons given by some members of the Court holding a contrary view, reasons which are not altogether-wrong except that they are pervaded with a spirit of rigid conservatism in utter disregard of Rule 1, section 2, which counsels liberality in the construction and application of procedural rules with a view "to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding." Decisions in American jurisdiction prior to the procedural reform may be found in support of the contrary view—decisions which are either obsolete or applicable only in ordinary civil actions triable in inferior courts. In solving procedural problems, the progressive and liberal spirit of the reform should be our beacon light.

Simplicity of pleading is the ideal of modern procedure. Under the new Rules of Court, an action cannot be dismissed upon the ground that the complaint is vague, ambiguous, or indefinite (see Rule 8, section 1), because the defendant, in such case, may ask for more particulars (Rule 16) or he may compel the plaintiff to disclose more relevant facts under the different methods, of discovery provided by the Rules. (Rules 18, 20, 21, 22 and 23) Professor Sunderland once said: "The real test of a good pleading under the new rules is whether the information given is sufficient to enable the party to plead and prepare for trial. A legal conclusion may serve the purpose of pleading as well as anything else if it gives the proper information. If the party wants more he may ask for more details in regard to the particular matter that is stated too generally." (Vol. XIII, Cincinnati Law Review, January 1939). This justifies the form of complaint provided by the Rules in cases of forcible entry and unlawful detainer.

As to the propriety of the present action for mandamus, little need be said. Unlawful detainer is summary in nature and requires speedy action, and since the dismissal is predicated upon a misconstruction of the law regarding the court's jurisdiction, the writ may be granted.

For all the foregoing, it is ordered that a writ of mandamus issue, directed to the respondent Court of First Instance of Manila, ordering it to try the petitioner's case after defendant has answered, and to continue the same to final judgment, with costs against defendants-respondents.

Ozaeta, Paras, Hilado, Bengzon, and Briones. JJ., concur

[1] See rulings to this effect in *Gonzalez vs. Crisanto*, (2 Phil. 404); *Cruz vs. Co-Cuaco*, (4 Phil. 489).

PERFECIO, J., concurrente:

Concurrimos con la decisión redactada por el Presidente del Supremo Tribunal. La prolongada deliberación sobre este asunto nos ha obligado, sin embargo, a redactar esta opinion.

El recurrente ha entablado el presente recurso extraordinario de "mandamus" para que el Hon. Pompeyo Diaz, Juez de Primera Instancia de Manila, reponga la causa civil de desahucio No. 70205 de dicho tribunal, entablada por el recurrente contra los tres últimos recurridos en el presente asunto, la tramite en su fondo, y la decida de acuerdo con sus méritos.

Como un remedio adicional, se pide la abreviación de los trámites de este recurso, dada su naturaleza urgente, para que pueda decidirse con prontitud.

Exceptuando detalles de poca importancia, no existe controversia sobre los hechos que han dado origen al recurso entablado.

El 20 de Abril, 1945, el recurrente present en el Juzgado Municipal de Manila contra Yao Boom Sim y otros, una demanda por detentación ilegal, jurada y redactada en forma análoga que el modelo o fórmula No. 1 del Reglamento judicial.

El 26 de Abril, 1945, los demandados contestaron impugnando la jurisdicción del Juzgado, alegando que la demanda no expone hechos que constituyen suficiente motive de acción.

En la vista, el recurrente ofreció como prueba una carta requiriendo a los demandados a desalojar la finca en cuestión el 16 de Abril, 1945. Los demandados objetaron a la admisión de dicha carta, sobre el fundamento de que dicho requerimiento no se alegó en la demands. El Juzgado Municipal sostuvo la objeccion.

El día 26 de Abril, 1945, el recurrente solicitó del Juzgado de Primera Instancia de Manila un maidamiento perentorio para obligar al Juzgado Minicipal a recibir como prueba la citada carta.

El día 27 de Abril, 1945, el Juez Municipal recurrido contestó sosteniendo la teoría de que no es suficiente una demanda que siguiera el modelo reglamentario, siendo necesario que el demandante en una causa de desahucio alegara el requerimiento de desalojar para que pudiera probar que hubo semejante requerimiento.

El día 28 de Abril, 1945, el Juez Mamerto Roxas, del Juzgado de Primera Instancia de Manila, dictó decisión ordenando al Juez Mariano Nable, del Juzgado Municipal, a que reciba como prueba la carta de requerimiento en cuestión, sosteniendo la teoría de que el rechazar dicha prueba por la razón de no haberse alegado el requerimiento en el texto de la demanda, siendo esta una práctica reproducción de la fórmula No. 1 del apéndice del Reglamento judicial, es obra de acuerdo con un tecnicismo impráctico e innecesario, del cual debe prescindirse en especial en asuntos de urgencia, como los de desahucio.

El 2 de Mayo, 1945, los demandados pidieron la reconsideración de la decisión del Juez Roxas. Fué denegada el 4 de Mayo, 1945. El 29 de Mayo, 1945, por haberse cumplido el mandamiento contenido en la decisión, fué denegada la apelación contra esta.

El 4 de Mayo, 1945, el Juez Nable dictó decisión de desahucio contra los detnaidados.

Estos apelaron. Ya remittida la causa al Juzgado de Primera Instancia, el 29 de Mayo, 1945, los demaidados y apelantes presentaron moción de sobreseimiento, sosteniendo que dicho Juzgado carece de jurisdicción y de que la demanda no alega hechos que fueran suficiente motivo de acción. La moción se funda sobre el silencio de la demanda acerca del requerimiento hecho en la carta en Questión.

En su conteatación del l.[o] de Junio, 1945, el recurrente alegó que la misma cuestión ya ha sido decidida contra los demandados en el recurso de mandamiento fallado por el Juez Roxas, que la demanda es una copia de la fórmula No. 1 del Reglamento, el cual declara suficiente un cumplimiento substancial de la dirección contenida en su formulario, y que la moción es puramente dilatoria.

El Juez Pompeyo Díaz, del Juzgado de Primera Instancia de Manila, en orden del 9 de Junio, 1945, declaró bien fundada la moción de sobreseimiento y decretó nula la decisión del Juzgado Municipal.

El 16 de Junio, 1945, el recurrente pidió la reconsideración de dicha orden. Fué denegada en orden del 29 de Junio 1945.

El recurrente, en el asunto que se halla bajo nuestra consideración, solicita un mandamiento perentorio para que el Juez Pompeyo Díaz reponga la causa de deahucio, la tremite y decida.

El recurso plantea, entre otras, las siguientes cuestiones:

- 1.[a] La jurisdicción del Juzgado Municipal y del Juzgado de Primera Instancia sobre la demanda de desahucio.
- 2.[a] La suficiencia de dicha demanda.
- 3.[a] La propiedad del recurso de "mandamus".

El Juez recurrido sostiene que la alegación del requerimiento mencionado en el artículo 2 de la Regla 72 es jurisdiccional.

El Juzgado de Primera Instancia, recurrido, sostiene la teoría de que el requerimiento objeto del artículo 2 de la Regla 72 debe alegarse para que el Juzgado Municipal pudiera adquirir jurisdicción en una causa de desahucio. No hay nada, sin embargo, ni en la ley ni en el Reglamento Judicial disposición alguna, que sostenga semejante teoría.

La Ley No. 136 de la Comisión Filipina confirió a los juzgados municipales y de paz la jurisdicción para conocer y fallar los asuntos de desahucio por usurpación o detentación, sin limitación alguna en cuanto al valor del objeto en litigio, y al conferir dicha jurisdicción no ha impuesto la condición de que para que pueda ejercerse es preciso que la demanda iniciatoria del asunto alegue el requerimiento objeto del artículo 2 de la Regla 72.

Por otro lado, ni en el artículo 2 de la Regla 72, ni en parte alguna de todo el Reglamento Judicial vigente se encuentra disposición alguna sobre que pueda basarse la teoría de que la alegación del requerimiento en cuestión es requisito esencial para conferir la jurisdicción en controversia.

La cuestión sobre si el Juzgado Municipal tenía o no jurisdicción sobre el asunto de autos debe resolverse, teniendo en cuenta si el asunto mencionado es de los que la ley menciona que deben estar comprendidos dentro de los poderes jurisdiccionales del Juzgado Municipal.

A la vista de los hechos alegados en la demanda iniciatoria del asunto, no puede haber controversia justificada de que el asunto en cuestión es uno de desahucio, por detentación de bien raíz, tal como está definido por la ley, tal como es conocido en nuestra jurisprudencia, y tal como es definido en el artículo l.[o] de la Regla 72. Es decir, bajo todas las normas que tenemos a nuestra disposición para identificar si un asunto es o no de desahucio por detentación, tenemos que concluir que el pleito de origen tiene todos los caracteres de semejante asunto, siendo

superfluo todo esfuerzo adicional para demostrarlo.

Por consiguiente, es Inevitable la consecuencia lógica de que el Juzgado Municipal tenía jurisdicción sobre el litigio en cuestión.

La cuestión sobre la suficiencia de dicha demanda, por omitirse en ella el requerimiento especificado en el artículo 2 de la Regla 72, no tiene relación alguna con la jurisdicción. Sea o no suficiente la demanda, desde el momento en que se ha identificado como una de desahucio, desde ese momento cae dentro de la jurisdicción del Juzgado Municipal.

Si la demanda era insuficiente, por la razón de debió incluir el requerimiento en cuestión, como un elemento esencial, semejante defecto sólo hubiera podido afectar el curso procesal del asunto, como un incidente que hubiera podido dar lugar a la enmienda de la demanda, al sobre-seimiento de la misma, o a impedir que la parte demandante pudiera suplir con pruebas los defectos alegatorios, incidentes procesales que de ningún modo pueden afectar la jurisdicción del Juzgado Municipal.

Pero, preguntamos: Era o no suficiente la demanda?

El artículo 2 de la Regla 72 no exige que el requerimiento mencionado en él se alegue en la demanda. De hecho, no hay nada en todo el Reglamento que establezca semejante requisito en la demanda. El artículo 2 de la Regla 72 sólo dispone que el requerimiento mencionado en él es un hecho esencial para que el demandante pueda ejercer el derecho de demandar por desahucio a su inquilino.

El recurrente alega que redactó la demanda de autos, tomando por modelo la fórmula o modelo número 1 del apéndice del Reglamento. La alegación es correcta.

La sabiduría de incluir en el Reglamento el citado formulario como apéndice es discutible, pero es indiscutible que la demanda de autos es una sustancial reproducción del modelo Número 1 de dicho apéndice.

En el mismo apéndice, el Supremo Tribunal, en el ejercicio de los poderes legislativos expresamente conferidos por la Constitución, con relación a las reglas judiciales, ha dispuesto que el cumplimiento sustancial de las indicaciones contenidas en el formulario será suficiente.

Hasta tanto no se haya revocado semejante precepto reglamentario por el Supremo Tribunal o por el Congreso, ningún Juzgado o tribunal tendrá facultad para declarar insuficiente una demanda que bajo dicho precepto es suficiente. El mismo Supremo Tribunal está impedido para negarse a dar pleno efecto a dicha disposición reglamentaria.

Pretender que para que una demanda de desahucio sea suficiente debe contener como parte de sus alegaciones el requerimiento mencionado en el artículo 2 de la Regla 72, es pretender pasar por encima del precepto contenido en el apéndice formulario que solo requiere el cumplimiento sustancial de las indicaciones contenidas en dicho formulario.

No debe pasar inadvertido el hecho de que un mal entendido tecnicismo ha provocado innecesarias complicaciones procesales en un sencillísimo asunto de desahucio, cuya tramitación, de acuerdo con la ley y con el Reglamento, debe verificarse con la mayor brevedad posible y con el menor gasto para las partes.

Aun suponiendo correcta la teoría del Juzgado Municipal y del Juzgado de Primera Instancia recurrido, sobre la insuficiencia de la demanda de autos, qué impedía para que el Juzgado Municipal ordenara la enmienda de la demanda?

La alegación de que se hizo el requerimiento mencionado en el artículo 2 de la Regla 72 hubiera podido

insertarse en la demanda en uno o dos minutos, y casi sin interrumpir la vista del asunto, especialmente, teniendo en cuenta el hecho de que el demandante contaba con prueba documental de que hizo semejante requerimiento, prueba documental que ya se había exhibido al Juzgado cuando se suscitó la cuestión sobre si, dada la alegada insuficiencia de la demanda, podía el demandante presentar dicho documento como prueba o no.

La celeridad con que el Juez Mamerto Roxas despachó el recurso de mandamiento perentorio, para obligar al Juez Municipal a recibir dicho documento como prueba, es una demostración digna de encomio del propósito de administrar la justicia con prontitud y eficiencia, es un ejemplo que merece ser tenido en cuenta por todos los funcionarios judiciales.

La demanda se presentó el día 26 de abril, 1945. El 27 de abril, 1945, se presentó contestación. Y, unas cuarenta y ocho horas después de iniciado el recurso, o sea el día 28 de abril, 1945, el Juez Mamerto Roxas dictó la decisión, concediendo el recurso solicitado.

Pero esta prontitud en el despacho de dicho recurso no ha impedido que una sencilla causa de desahucio se haya llevado dos veces al Juzgado de Primera Instancia de Manila y una vez al Supremo Tribunal, y sin que haya podido verse en su fondo en el Juzgado de Primera Instancia después de más de cuatro meses de iniciado el asunto en el Juzgado Municipal.

El caso de autos, desafortunadamente, no es más que un ejemplo de una práctica seguida en muchísimos otros asuntos de desahucio y que viene motivando la justa queja de litigantes y abogados desde hace muchos años. Efectivamente, no son pocos los litigios de desahucio que han requerido, no solo muchos meses, sino años para que pudieran decidirse definitivamente, anomalía judicial que no tiene justificación alguna.

Se ha dicho repetidas veces que la justicia retrasada es justicia denegada, y es necesario, para corregir el mal, que los funcionarios judiciales renueven diariamente, como una constante profesión de fe, los propósitos y los compromisos que han asumido en sus juramentos como abogados y como jueces.

El artículo 2 de la Regla 1 del Reglamento Judicial preceptúa que las reglas judiciales deberán ser interpretadas liberalmente, con el fin de asegurar su objeto y de ayudar a las partes a obtener en cada asunto y procedimiento una decisión justa, pronta y no costosa. Este mandato reglamentario debe tenerse constantemente presente, para esquivar toda disquisición vacía sobre mal entendidos tecnicismos legales que, en último análisis, no son más que meros sofismas, más o menos ingeniosos, rémoras que obstruyen la pronta y expedita administración de justicia, uno de los objetivos fundamentales del sistema de gobierno implantado por nuestra Constitución.

El artículo 68 de la Ley No. 136 de la Comisión de Filipinas preceptúa: "Los jueces de paz también tendrán competencia para conocer de los juicios por usurpación o detención de bienes raíces, sea cuál fuere la cuantía del litigio."

El Juzgado de Paz que existía en Manila, al tiempo de la promulgación de la Ley No. 136 de la Comisión de Filipinas, fue sustituido por el presente Juzgado Municipal al que, según, disposición de la Carta de Manila, se ha trasladado la jurisdicción del anterior Juzgado de Paz de la capital.

Del texto del artículo 68 que se acaba de acotar se desprende que la jurisdicción conferida por la ley sobre asuntos de usurpación o detención de bienes raíces debe determinarse a base de la naturaleza de las causas que en cada caso se planteen. Es decir, la norma de juicio que debe seguirse se determina si el pleito planteado es o no de usurpación o de detención de bienes raíces. Si la contestación es afirmativa, la existencia de la jurisdicción tiene que ser evidente. Si la contestación es negativa, a menos de que el pleito quede dentro de la jurisdicción del juzgado de paz o municipal bajo otra norma, habrá que declarar inexistente la jurisdicción.

El asunto planteado en el Juzgado Municipal que motiva el presente recurso es, indudablemente, por su naturaleza, uno por detentación de bienes raíces. Nadie ha discutido la naturaleza del asunto. Nadie ha discutido que este reúne los caracteres esenciales de un pleito de detentación de bienes raíces. La misma representación de los demandados, al informar oralmente como abogado de los recurridos en este recurso, no ha manifestado así de una manera categórica, de un modo inequívoco.

Si esto es así, tan poco debe haber duda alguna que el Juzgado Municipal tenía plena jurisdicción para conocer y fallar el asunto.

Pretender que para que el Juzgado Municipal pudiera tener jurisdicción sobre dicho asunto es necesario que en la demanda se alegue expresamente el requerimiento objeto del artículo 2 de la Regla 72, es establecer una condición que no estaba en la mente del legislador al conferir a los juzgados de paz la jurisdicción sobre asuntos de usurpación o detentación de bienes raíces. De otra suerte, la Comisión de Filipinas hubiera redactado el artículo 68 de la Ley No. 136 en términos que incluya la citada condición.

La Corte Suprema no puede sentar la doctrina de que para que el Juzgado Municipal pueda ejercer jurisdicción sobre el asunto de autos debe alegarse en la demanda el requerimiento en cuestión, sin enmendar el artículo 68 de la Ley No. 136, cosa que no puede constitucionalmente hacer, porque implicaría la usurpación de poderes legislativos que no le han sido conferidos por la Constitución.

La ley dispone sencillamente que los juzgados de paz tienen jurisdicción sobre asuntos de usurpación o detentación de bienes raíces. Condicionar el ejercicio de dicha jurisdicción es establecer una limitación no estatuida legalmente.

No podemos ni debemos suponer que la Corte Suprema, al insertar en el Reglamento el artículo 2 de la Regla 72, tuvo el propósito de establecer el requerimiento mencionado en dicho artículo como condición, sin la cual el Juzgado Municipal no podría ejercer jurisdicción sobre dicho asunto de detentación de bienes raíces, pues no podemos ni debemos suponer que el Supremo Tribunal pudo concebir el propósito de ejercer una facultad legislativa que no le compete. Y en la falsa hipótesis de que el Supremo Tribunal haya concebido erróneamente semejante propósito, hipótesis no justificada por el texto del Reglamento, no debe reconocerse eficacia al precepto reglamentario que exprese semejante propósito, porque una extralimitación en el ejercicio de poderes constitucionales de parte de cualquier organismo del Gobierno es nula "per se."

Es evidente que el Supremo Tribunal no ha concebido el propósito que discutimos, no sólo por la absoluta ausencia de pruebas que lo demuestran, sino por haber realizado actos positivos incompatibles con semejante propósito. Estos son, primero, el haber redactado el modelo número 1, según aparece consignado en el apéndice del Reglamento, y, segundo, la disposición expresa en dicho apéndice de que el cumplimiento sustancial de la norma sentada en el formulario será suficiente.

Se ha mencionado una decisión del Supremo Tribunal (Gumiran contra Gumiran, 21 Jur. Pil., 178) que, según la parte recurrida, sienta una doctrina que apoya la teoría de que la alegación del requerimiento en controversia es esencial para que una demanda de detentación de bienes raíces pueda conferir jurisdicción a un juzgado de paz o municipal.

Habiéndose promulgado dicha decisión con anterioridad a la promulgación del presente Reglamento, es evidente que al redactar dicho Reglamento, en el ejercicio de las facultades legislativas sobre reglas judiciales conferidas por la Constitución, el Supremo Tribunal abandonó la doctrina sentada en la referida decisión, sea porque haya dejado de encontrarla acertada, sea porque haya tenido el propósito de adoptar una nueva política procesal, o sea porque creyese que de semejante modo sirve mejor los nobles intereses de la justicia. Pero la cita del asunto de

Gumiran no justifica la pretensión de la parte recurrida.

La autoridad invocada por el Juez recurrido es la decisión en el asunto de Gumiran contra Gumiran (21 Jur. Pil., 178-184), en donde se han hecho los siguientes pronunciamientos:

"Desde luego, no tratamos de resolver que la demanda debe alegar, siguiendo la letra de la ley, que la persona ha sido despojada de su posesión por fuerza, intimidación, amenaza, estratagema o dolo. En una acción de desahucio, el demandante debe exponer en su demanda los hechos que demuestran que el desposeimiento tuvo lugar por razón de fuerza, intimidación, etc.

"En el presente caso, lo alegado en la demanda es simplemente que el demandante ha sido 'privado' del terreno del cual es y ha sido durante largo período, el dueño legal. Dicha alegación no es bastante para demostrar que la acción se funda en las disposiciones del artículo 80 (del Código de Procedimiento Civil).

"Además, examinada la petitoria de la demanda, se ve que el demandante no sólo pide que se reponga en la posesión del terreno, sino que también desea una declaración de que es el dueño del mismo. Del examen de la demanda resulta, y bien evidente, que si la misma se hubiese presentado ante el juzgado de paz, cabía la interposición de un demurrer, en razón a que los hechos alegados no demuestran que el demandante haya sido despojado por algunos de los medios que se mencionan en el citado artículo 80.

Es regla general de alegaciones y práctica forense, que en todos los escritos que se presenten ante tribunales de jurisdicción especiales, los hechos especiales que dan competencia al tribunal deben alegarse y exponerse especialmente."

Pero estos pronunciamientos no pueden tener fuerza de autoridad para la cuestión de autos, por la sencilla razón de que no son más que simples "dicta" en el pleito fallado.

En efecto, en el asunto de Gumiran contra Gumiran la única cuestión que se planteó para la decisión del Supremo Tribunal es si el Juzgado de Primera Instancia de Isabela erró o no al estimar el demurrer formulado a una demanda presentada el 18 de febrero de 1909, en donde se alegaba que los demandantes fueron privados de la posesión del terreno en litigio el día 6 de mayo de 1908, y en donde pedían se condenase al demandado a restituir la posesión del terreno a los demandantes, a declarar a estos con derecho al título, dominio y posesión del inmueble, al pago de daños y perjuicios, además de otros remedios.

El demandado fundó su demurrer en el hecho de que la demanda se presentó antes de transcurrido un año después de la privación de la posesión, y que, por tanto, el asunto no era de la competencia del Juzgado de Primera Instancia sino de un juzgado de paz.

El Juez Richard Campbell sostuvo el demurrer.

El Supremo Tribunal revocó la resolución del Juez Campbell, fundándose en el hecho de que los hechos alegados en la demanda son de la jurisdicción del Juzgado de Primera Instancia, sosteniendo la doctrina de que no ha sido la intención del legislador privar a los juzgados de primera instancia de su competencia originaria en causas de despojo cuya jurisdicción no se ha conferido exclusivamente a los juzgados de paz, y "en las que el demandante desee que se determine al mismo tiempo la cuestión de su derecho de propiedad", aun cuando la acción se entable "dentro del año".

Como se observará, los pronunciamientos que la parte recurrida en este recurso invoca como autoridad solo son parte de argumentos aducidos pero que no tienen relación directa con la cuestión decidida y, por tanto, solo tienen el carácter de un "obiter dictum".

"Obiter" viene del verbo "obire", pasar, y "obiter dictum" no es más que una opinión incidental y colateral, no directamente material con la decisión, ni pertinente a una sentencia, expresada de paso y que, por tanto, carece de

fuerza autoritaria.

Según autoridades, al decidir una contienda legal, con frecuencia los tribunales discuten cuestiones colaterales sobre las cuales expresan una opinión que no ha sido bien meditada o sin que hayan sido discutidas en la vista del asunto. Tales pronunciamientos solo pueden tener el peso que pueda darse a la opinión privada de un juez o magistrado individual, pero no tiene el valor de una acción colectiva del tribunal colegiado de apelación. Ocurre, con frecuencia, que el Supremo Tribunal decide una cuestión, pero cada Magistrado llega a la misma conclusión sosteniendo diferentes puntos de vista sobre la ley entre ellos. Es regla, por tanto, que la expresión de una opinión, aunque ésta se haya arguido completamente, si no es esencial para la determinación de una causa, debe ser considerada coino "obiter dictum" y no tiene el valor de una autoridad. (Véase el vocable "dictum" en Cyclopedic Law Dictionary de Shumaker y Foster Longsdorf y las autoridades citadas en él.)

Por otro lado, se ha declarado que en una acción entablada por el arrendador para recobrar la posesión de la finca "compliance with a statutory condition precedent may not be specially alleged* (36 Corpus Juris, 611, section 1786); que en asuntos de despojo y detentación "no es necesario alegar hechos partculares, siendo suficiente el lenguaje de la ley" (Greenmayer vs. Coate, 12 Okla. 452, 72 p. 3770), y la razón es que "strict rules are not applicable to justice court pleadings, and a statement in the terms of the statute may be sufficient", (Armour backing Co. vs. Howe, 65 Kans., 663, 75 p. 1014; Watson vs. Whitne, 23 Cal., 376; Sutherland, "Code Pleading, Practice and Form," section 6470).

Siendo evidente que el asunto planteado por la demanda de autos es uno de detentación, como lo ha manifestado enfáticamente el mismo abogado de los demandados, tenemos que concluir que el Juzgado Municipal tenía jurisdicción sobre el mismo, no importando cualquiera discusión sobre la suficiencia o insuficiencia de las alegacionea de la demanda.

"Está bien determinado que la Jurisdicción no depende de la suficiencia de un eserito de alegaciones. Si la corte tiene jurisdicción sobre la materia y sobre las partes, no se requiere otra cosa. La causa de acción puede expresarse defectuosamente, pero ello no destruye la jurisdicción." (O'Brien vs. People, 20.6 111., 554, 363, citando State vs.

El análisis del pasaje en el asunto de Grumiran contra Guiniran demostrará. cuan poco valor puede tener los "obiter dicta" contenidos en él para los fines de la presente discusión.

Por de pronto comienza con una declaración general sobre la que debe contener una demanda de desahucio.

"En una accion de desahucio, el demandante debe exponer en su demanda los hechos que demuestran que el desposeimiento tuvo lugar por razon de fuerza, intimidacion, etc."

Es evidente que el autor de semejante pronunciamiento, por grande que sea el respeto que debe merecer de nosotros, (según Aristótele's, lo primero es la verdad, "amicus Plato, sed magis amica veritas") ha demostrado un olvido indiscutible. Se ha olvidado que una demanda de desahucio también puede entablarse por un vendedor o un comprador que no ha sido deapojado de la posesión mediante fuerza, amenaza, intimidación, o por el arrendador que voluntariamente había cedido la posesión de una flnca a un inquilino.

El pasaje continúa:

"En el presente caso, lo alegado en la demanda es simplemente que el demandante (en el asunto hay tres demandantsa) ha sido 'privado' del terreno del cual es y ha sido durante largo periodo, el dueño legal. Dicha alegación no es bastante para demostrar que la acción se funda en las diaposiciones del articulo 80 (del Código de Procedimiento Civil).

Semejante pronunciamiento se refiere, en primer término, a una disposición que ha sido suplantada por el vigente

Reglamento Judicial y, en segundo termino, el último preceptúa en términos categóricos que el seguir sustancialmente el modelo en cuestión es suficiente. Por tanto, carece de aplicación al caso de autos.

Luego el autor del pasaje reitera su error al hacer creer que una demanda de desahucio sólo puede entablarse por la víctima de un despojo en la posesión, añadiendo que la demanda en el asunto de Gumiran hubiera podido ser objeto de demurrer "si se hubiese presentado" en un juzgado de paz, mencionando de paso el hecho de que en dicha demanda la parte demandante desea una declaración de que "es el dueño."

Por último, el pasaje dice:

"Es regla general de alegaciones y práctica forense, que en todos los escritos que se presenten ante tribunales de jurisdicción especial, los hechos especiales que dan competencia al tribunal deben alegarse y exponerse especialmente."

Lo primero que llama la atención en este pronunciamiento es el descuido en decir "todos los escritos que se presenten" que induce al resultado absurdo de que hasta en mociones incidentales deben alegarse los hechos especiales que dan jurisdicción.

Pero aun suponiendo que la regla general aludida se aplicara simplemente a demandas y contrademandas, sin entrar ahora a discutir sobre si semejante regla debe ser o no reconocida, dado el espíritu liberal que informa el actual Reglamento, no puede tener aplicación alguna al caso de autos, en donde se presenta el caso especial de una demanda que, según diaposición del mismo Reglamento, es suficiente.

Los pronunciamientos en el asunto de Gumiran contra Gumiran demuestran, una vez más, la poca prudencia en invocar como autoridad la "obiter dicta" de una opinión judicial.

No existe controversia alguna sobre la facultad de la Corte Suprema de adoptar el modelo número 1 en cuestión. Tampoco existe controversia alguna sobre la facultad del Supremo Tribunal para dictar la disposición reglamentaria de que el cumplimiento sustancial de la norma sentada por el formulario es suficiente.

¿Qué principio, qué regla, qué ley puede invocarse ahora para que el Supremo Tribunal declare ahora insuficiente para conferir jurisdicción una demanda por detención de bienes raíces redactada de conformidad con dicho modelo Número 1?

¿Qué razón podría invocarse para inducir al Supremo Tribunal a declarar ahora insuficiente lo que ha declarado suficiente en el Reglamento que ha promulgado?

¿Que sabiduría humana o divina podrá descubrir, no ya una coonestación, sino una atenuación de las graves consecuencias que se seguirían si el Supremo Tribunal es el primero en negar eficacia a un precepto reglamentario, cuando su cumplimiento es invocado por un litigante que se cree lesionado en sus derechos por una actuación de un tribunal inferior en contravención de dicho precepto?

Se ha dicho que el Supremo Tribunal ha insertado el modelo Número 1 en cuestión como guía para litigantes y abogados.

El recurrente, al redactar su demanda, obró siguiendo a ese guía.

Pero ahora se pretende que ese guía no es un guía completo; que ese modelo Número 1 debe estar acompañado de la alegación del requerimiento mencionado en el artículo 2 de la Regla 72; que la ausencia de dicha alegación hace insuficiente la demanda; que esa insuficiencia vicia la jurisdicción del tribunal; que por tal motivo, el demandante carece del derecho de obtener del Juez Municipal el remedio a que en justicia es acreedor, de conformidad con los hechos.

Si se ha de aceptar la teoría de la parte recurrida, tendremos aquí un guía que, lejos de guiar, extravía. Tendremos un guía que en vez de conducir a la meta anunciada, conduce al precipicio; un guía que, en vez de señalar el camino del triunfo, abre el abismo del fracaso.

No podemos aceptar que se estampe semejante estigma sobre la frente de los autores del modelo Número 1 del apéndice del Reglamento.

Difícilmente podrá discutirse la sabiduría de señalar como norma para la redacción de una demanda por detentación de bienes raíces la fórmula en cuestión.

Los asuntos de usurpación o detentación de bienes raíces, cuya jurisdicción se ha conferido a los juzgados de paz, son de carácter sumario y deben ser despachados con presteza y sin tecnicismos innecesarios que, lejos de dar vida, matan los propósitos de la recta y eficiente administración de justicia.

Cuando el Supremo Tribunal redactó el sencillísimo modelo Número 1, indudablemente, no ha hecho más que hacerse eco del clamor de litigantes y abogados contra la frecuente censurable dilación en asuntos de tal índole.

Es, indudablemente, con el objeto de corregir semejante vicioso estado de cosas por lo que el Supremo Tribunal decidió que se adopte un procedimiento más sencillo que en parte pudiera corregir una situación anómala y nada satisfactoria para los fines de la administración de justicia.

Teniendo en cuenta la sencillez de los asuntos de desahucio, el Supremo Tribunal no ha creído necesario que la demanda en los mismos se redactara con artificios y complicaciones que no pueden encontrarse en el sencillo modelo Número 1, cuyo texto es suficiente para informar a la parte demandada de la cuestión planteada en el litigio y para que pueda presentar todas las defensas que tuviese a su favor, sin exponerse a engaños ni sorpresas.

En el mismo asunto de autos, no consta que los derechos e intereses de los demandados hayan sufrido lesión alguna cuando el Juzgado Municipal tramitó en su fondo y recibió las pruebas en la causa de desahucio entablada mediante la sencilla demanda en controversia. El Juzgado Municipal dictó decisión contra los demandados, y estos apelaron de dicha decisión. No hay en la apelación interpuesta, ni en los trámites que se han seguido en el Juzgado de Primera Instancia hasta que se dictó la orden del Juez Díaz que motiva el presente recurso, nada que indique que los demandados quedaron perjudicados en sus derechos e intereses por la omisión en la demanda de una alegación sobre el requerimiento en cuestión.

De hecho, la misma representación de los demandados, cuando fué preguntada en la audiencia de este recurso en qué pudieron quedar lesionados los derechos de sus clientes por no haberse incluido en la demanda la alegación sobre el requerimiento, sólo pudo alegar que no pudo interponerla defensa de que el demandante, al entablar la demanda de desahucio, tenía el propósito de alquilar la finca en litigio a otro inquilino mediante precio mayor y que los demandados tenían un negocio establecido en dicha finca, hechos que hubiera podido alegar y probar, si haya hecho o no la alegación del requerimiento en la demanda en cuestión. La omisión de semejante alegación no podía haber sido un obstáculo para alegar y probar las referidas defensas.

El tecnicismo erróneo que invocan los recurridos, en cambio, ha lesionado el derecho del demandante a obtener el remedio a que es acreedor en un tribunal de justicia.

Por otro lado, bajo el Código civil, cualquiera infracción de los términos del contrato de arrendamiento da derecho al arrendador a desahuciar al arrendatario. Si la teoría de la parte recurrida se ha de aceptar, dará por resultado que el requerimiento dispuesto en el artículo 2 de la Regla 72 se convierte en un elemento esencial del derecho sustantivo de desahuciar. Es decir, tiene por efecto enmendar el correspondiente precepto del Código Civil, cosa que no puede hacerse en un reglamento judicial promulgado por el Supremo Tribunal, cuando el poder

legislativo conferido a éste queda circunscrito únicamente al derecho procesal, de tal suerte que aun cuando fuera correcta la teoría de la parte recurrida, no hay manera de dar eficacia a una disposición reglamentaria que trascienda la esfera de los poderes constitucionales conferidos al Supremo Tribunal.

Al hablar del formulario, el Reglamento se expresa del modo siguiente:

"The following forms, which serve as mere illustrations, may be used. Substantial compliance therewith shall be sufficient,"

Tanto en Bouvier's Law Dictionary como The Cyclopedic Law Dictionary de Shumaker and Poster Longsdorf, la fórmula o modelo, "form", se define como siguiente:

"The model of an instrument or legal proceeding, containing the substance and the principal terms, to be used in accordance with the laws,"

El termino modelo tiene sinonimia con los términos arquetipo, criterio, norma, fórmula, ejemplo, ilustracion.

El diccionario de la Academia Española dice que "modelo" es "Exemplar o forma que uno se propone y sigue en la ejecución de una obra artística o en otra cosa. En las obras de ingenio y en las acciones morales, exemplar que por su perfección se debe seguir e imitar." Y sostiene que la palabra procede de la latina "modulus" que significa molde, cuya acepción figurada es la de "Persona que por llegar al sumo grado en una cosa, puede servir de norma y regla en ella." También de ahí la locución "de molde" quiere decir "bien, perfectamente, con maestría."

En Webster's New International Dictionary se dice que "form" es "A manner or method, esp. as regulative or prescriptive; established method of expression or practice fixed or formal way of proceeding; formality, conventional or stated scheme; also, a prescribed or set order of words; a formula."

En la disposición del Reglamento acotada arriba se dice que los modelos del formulario sirven de ilustración. Esta palabra procede del verbo latino "illustrare", que quiere decir hacer brillante o luminoso, iluminar, alumbrar, exponer a la luz.

Pero, siguiendo la teoría de la parte recurrida, el modelo Número 1, lejos de ilustrar, produce error y confusión, obscuridad y fracaso.

El Reglamento dispone que los modelos del formulario "may be used."

El recurrente, siguiendo esta indicación, usó el modelo Número 1, y la parte recurrida pretende que se ha equivocado, y que la demanda que el demandante redactó, siguiendo dicho modelo, es tan defectuosa que no ha podido siquiera conferir jurisdicción al Juzgado Municipal.

Cuando un modelo o fórmula se inserta en una ley, como el presente Reglamento Judicial, adquiere la fuerza de una regla legal. Su efecto es regulatorio o prescriptivo.

Las palabras "form", forma y fórmula, procedentes de la latina "forma", tienen por origen mediato el término sánscrito "dharma", que significa orden, ley.

Por consiguiente, cuando el Supremo Tribunal redactó el modelo Número 1 del formulario que constituye el apéndice del Reglamento, de hecho legisló que una demanda redactada de acuerdo con dicho modelo es suficiente para todos los propósitos legales, incluyendo el efecto de conferir jurisdicción. El espíritu liberal que ha inspirado la preparación de dicho modelo queda mejor patentizado por el hecho de que el Supremo Tribunal no sólo dispone que el modelo puede ser usado, sino que será suficiente el cumplimiento substancial de las indicaciones contenidas en él.

Ese espíritu liberal del Supremo Tribunal está en consonancia con el propósito legislativo de caracterizar con la sencillez los procedimientos en los juzgados de paz, con plena premeditación legislativa, se han designado así, y en especial la tramitación de los asuntos de usurpación o detentación de bienes raíces.

El espíritu liberal del Supremo Tribunal en este respecto se ha revelado hasta el extremo de permitir que los juzgados de paz y municipales puedan conocer, tramitar, y fallar los asuntos de pequeña cuantía, donde la cantidad envuelta no exceda de veinte pesos, sin necesidad de demandas ni de escritos de alegaciones.

Es decir, una demanda desahucio, en donde no se reclaman alquileres mayores de veinte pesos, podría entablarse no ya siguiendo únicamente las indicaciones contenidas en el modelo Número 1 en cuestión, sino hasta sin escrito formal alguno, como se dispone en el artículo 17 de la Regla 4.

El citado artículo está concebido como sigue:

"SEC. 17. Procedure in minor matters.—Where a claim does not exceed twenty pesos, no written or formal pleading need be filed, but the judge shall note the claim, and in such form as he may deem best and convenient under the circumstances shall summon the parties and hear them as well as their witnesses. If the defendant fails to appear at the first informal call, a formal summons with an information as to the claim against him may be issued. After the hearing, both parties shall be informed of the judgment, which may be oral, but shall be noted in the corresponding docket together with the claim, defense, and all the proceedings thereon. No fees shall be charged or costs allowed in such proceedings."

La liberalidad del precepto acotado no se reduce a permitir la presentación de una demanda no escrita. Va mucho más allá. Permite la omisión de un emplazamiento formal. Es decir, autoriza al juez de paz a enviar al demandado una invitación amistosa, a fin de que el procedimiento informal y amistoso facilite la restauración de la paz entre las partes litigantes. Pero la liberalidad del procedimiento no para allí. Permite que la decisión se dicte oralmente, no siendo necesario que se escriba, aunque el juez deberá tomar nota de lo decidido en su registro oficial. Y, para colmo de simplicidad, ordena que no se cobren derechos legales ni se adjudicarán costas procesales.

He ahí sintetizada una innovación en nuestro sistema procesal que revela que el derecho filipino no es estático ni decadente, sino que, antes bien, reconoce la sabiduría de sincronizarse con el ritmo del progreso y de ajustarse con las nuevas modalidades del estado social y con el desenvolvimiento de la conciencia jurídica del pueblo, en perpetua demanda de la realización del supremo ideal de lo justo.

Pero si, no obstante todo lo expuesto, el Supremo Tribunal ha de denegar ahora el recurso que tenemos bajo nuestra consideración, sosteniendo la teoría de la parte recurrida, de que el Juzgado Municipal no adquirió jurisdicción sobre la demanda de desahucio entablada por el recurrente, porque éste, cumpliendo disposiciones del Reglamento, se redujo a reproducir el modelo Número 1, ¿cómo podrá evitarse la conclusión de que semejante modelo ha sido puesto en el Reglamento nada más que como un señuelo o una añagaza para engañar y extraviar a los incautos?

Ninguna cantidad de argumentos, ninguna oasatoria en el mundo podrá disuadir al hombre común, al ciudadano que no ha ejercitado la agudeza de su ingenio en los artificiosos tecnicismos de la ley y mira las cosas con la sola ayuda de la linterna divina de la razón, que el Supremo Tribunal, cuando menos, ha incurrido en una inconsecuencia, abandonando el elevado pedestal en que le ha colocado la fe y la confianza del pueblo para que ejerza el sagrado ministerio de la administración de justicia de conformidad con la razón y la lógica.

Del "dharma" sánscrito, de donde se originan los vocablos "form", "forma", "formula", procede "dharmavid", jurisconsulto, conocedor del deber. Y es un término íntimamente relacionado con "dharma", religión. Esto es indicativo del valor que debe darse al término "form" utilizado por el Reglamento. Su origen participa de lo sagrado de la ley y de la religión. Es un vocablo cuya noble prosapia etimológica es de gran significación

jurídica.

Por otro lado, según una autoridad, el vocablo español "modelo" también procede del latino "modellus", diminutivo de "modus", que significa medida, medida apropiada, límite, manera, forma, moderación, y que está relacionado con el griego "medein", reglamentar, regular, y el sanscrito "ma", medida.

Es evidente, por tanto, que el modelo en cuestión tiene todos los caracteres de una ley reguladora & prescriptiva. Y la persona que redacte una demanda ajustándose a dicho modelo es acreedora a todos los beneficios inherentes al cumplimiento de la ley. La proposición de que una demanda redactada de conformidad con el modelo mencionado no confiere jurisdicción niega los beneficios y la protección a que es acreedor un ciudadano que cumple la ley.

Semejante proposición anula los propósitos de la ley, infringiendo la garantía constitucional de la igual protección de la ley que ampara a todos los ciudadanos.

El Supremo Tribunal, al redactar el modelo en cuestión, obró inspirado por un propósito, porque detrás de toda medida legislativa, detrás de toda ley, detrás de toda regla hay un propósito que constituye la razón de ser de su adopción o promulgación.

"The fundamental idea of the present work consists in the thought that Purpose is the creator of the entire law; that there is no legal rule which does not owe its origin to a purpose, i. e., to a practical motive", dice el Dr. Rudolph Von Ihering, reconocido como un gran genio legal, en el prefacio de su "Der Zweck im Recht" (Propósito en la Ley.)

Simplificar los procedimientos en asuntos sumarios de usurpación o detención de bienes inmuebles, para hacerlos más accesibles al hombre común, al ciudadano que en la mayoría de las veces no puede contar con los servicios de un abogado, al pobre e ignorante a quien, no importa su pobreza e ignorancia, según manda la Constitución, los tribunales de justicia deben otorgar los mismos derechos y oportunidades que al rico y al poderoso para obtener remedios legales en sus litigios. He ahí el propósito que motivó el modelo.

El Vicegobernador General Joseph Ralston Hayden, en su libro "The Philippines", acota las siguientes palabras del Presidente Quezon:

"I want the justices of the peace to realize that although they are the lowest officials in the judiciary, yet they hold the most important position. The common man in the Philippines, the man who lives in the far distant barrio, will know whether this is a just government or not only by the manner in which the justices of the peace perform their duties." Discuso en Tacloban, Leyte, el 10 de Junio de 1938.)

"While the justices of the peace courts occupy the lowest position in the Philippine judicial hierarchy, they are the most important arms of the administrations of justice, in view of their closeness to the masses and the fact that for the redress of grievances, these courts are the ones accessible to the great majority of the people." (First Annual Report of the President of the Philippines, 1936.)

No se puede sostener la teoría de la parte recurrida sin frustrar el propósito por el cual adoptó el Supremo Tribunal el sencillísimo modelo objeto de la presente controversia, propósito que no es más que la expresión del estadismo judicial que, en concordancia con el estadismo ejecutivo, reconoce la sabiduría de la política de corregir y mejorar el sistema procesal en los juzgados de paz y municipales que, en su conjunto, constituyen la columna vertebral de nuestra judicatura.

Del sencillo, recto, eficiente, y expedito servicio judicial de los juzgados de paz y municipales depende, más que del funcionamiento de los demás organismos judiciales, la confianza pública en la administración de justicia, la fe

del pueblo en la rectitud de los jueces, la tranquilidad mental y el sentido de seguridad de los ciudadanos.

Ningún esfuerzo será suficiente o superfluo si tiene por objeto colocar a los juzgados de paz y municipales en un plano de eficiencia ideal como una de las agendas vitales de servicio público. La adopción del modelo en cuestión es, sin duda alguna, uno de los medios que el Supremo Tribunal ha seleccionado para vitalizar el funcionamiento de los juzgados de paz y municipales, emancipando sus procedimientos de formalismos artificiales en los escritos de alegaciones.

Los procedimientos judiciales, en general, deben caracterizarse por la sencillez, por la brevedad, por la claridad, para que puedan rendir la máxima utilidad en el servicio de la administración de justicia. El ideal sería que pudiesen reducirse en un compendio, en un breviario, en un epítome susceptible de ser llevado en el bolsillo o en una cartera, para el inmediato uso, no solo de juristas y abogados, sino de todo ciudadano que tuviera que acudir a los tribunales.

La necesidad de una simplificación en los procedimientos judiciales es más imperativa en tratándose de los juzgados de paz y municipales, los cuales deben llamarse por antonomasia los tribunales del pueblo. Son los que están en contacto más directo con el y sus funcionarios son los ministros más visibles de la administración de justicia.

En tales juzgados comparecen muchísimos litigantes sin la asistencia de abogado alguno. Muchos de los jueces no son abogados. De hecho, antes de las reformas introducidas por la Asamblea Nacional, los jueces de paz que eran abogados constituían una insignificante excepción. Los juzgados de paz y municipales carecen de bibliotecas. No están provistos de ejemplares de la jurisprudencia Filipina. Muchos ni siquiera reciben ejemplares de la Gaceta Oficial. La inmensa mayoría gracias si cuentan con una colección completa de los códigos y leyes que tienen que aplicar. No están en condiciones de estar informados de las más recientes controversias legales ni de las decisiones del Supremo Tribunal. No puede exigirse de ellos que conozcan, las doctrinas sobre puntos sutiles de derecho, sobre los cuales hasta los jurisconsultos, los abogados más ilustres y aun los mismos Magistrados del Supremo Tribunal están en desacuerdo.

Además, las condiciones de las zonas y distritos rurales en donde se encuentran la mayoría de los juzgados de paz no son las que más favorecen la adquisición de adecuada información sobre doctrinas legales, más o menos difíciles, más o menos abstrusas. En donde hay libros, en donde hay volúmenes de las decisiones del Supremo Tribunal, no son accesibles al público, en general, no solo por su escasez, sino porque no están impresos en el idioma de la localidad, el único conocido por la inmensa mayoría de la población. Las condiciones de vida, por otro lado, no son las más apropiadas para estimular la curiosidad intelectual que permite a jueces, abogados y litigantes seguir el progreso de la legislación, del derecho, de la jurisprudencia.

En tales condiciones, para que los juzgados de paz y municipales sean debidamente accesibles a los ciudadanos en general, como así deben ser, es absolutamente necesario que los procedimientos en ellos se simplifiquen hasta conseguir la máxima sencillez, para evitar que los derechos e intereses de los litigantes sean sacrificados en aras de un tecnicismo legal.

Los tecnicismos legales son un lujo que pueden permitirse las corporaciones millonarias, los grandes capitalistas, los opulentos industriales, los ricos propietarios, los comerciantes en gran escala que pueden pagar gordas igualas o tentadores honorarios profesionales a famosos abogados, especialistas o no, que cuentan con grandes bibliotecas y numerosos auxiliares para la acumulación de citas y autoridades. Tal vez las largas disquisiciones y prolongados debates sobre tecnicismos legales han contribuido al progreso del derecho, al descubrimiento de satisfactorias soluciones para difíciles problemas jurídicos, a la aclaración de las cuestiones legales más exquisitas. Pero para los litigantes pobres, para los sencillos campesinos, para el hombre de la calle, para el obrero

agobiado por las tareas del día y los problemas económicos y financieros result antes de la desproporcion entre un exiguo salario y una numerosa familia que alimentar, tales tecnicismos legales son un fardo pesado, imposible de sobrellevar, y cuyo objeto, a los ojos del público, no es otro sino obscurecer los pleitos y hacer fracasar los derechos mas bles.

En varias ocasiones, desde hace más de tres décadas este Tribunal Supremo ha fulminado términos enérgicos contra los tecnicismos en los procedimientos judiciales, especialmente, cuando tales tecnicismos se eonvierten en instrumentos en un juego de habilidad que hacen descansar el resultado de un litigio, no en sus verdaderos méritos, ni en los derechos substanciales de las partes, sino an la mayor o menor destreza de los contendientes y de sus abogados, convirtiendo los tribunales de justicia en una arena para deportes de ingenio, o torneos de sutileza, en lugar de ser instrumentos consagrados al servicio de uno de loa propósitos fundamentales de un estado.

"There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of Justice to the rival claims of contending parties. They were created, not to hinder and delay, but to facilitate and promote, the administration of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adapted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of their obvious duty.

"The error in this case is purely technical. To take advantage of it for other purposes than to cure it, does not appeal to a fair sense of justice. Its presentation as fatal to the plaintiff's case smacks of skill rather than right. A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust. Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. There should be no vested rights in technicalities. No litigant should be permitted to challenge a record of a court of these Islands for defect of form when his substantial rights have not been prejudiced thereby." (Alonso vs. Villamor, 16 Phil. [1910], 315, 321-522.)

"Certain statutes confer jurisdiction, power, or authority. Others provide for the procedure by which that power or authority is projected into judgment. The one class deals with the powers of the court in the real and substantive sense; the other with the procedure by which such powers are put in to action. The one is the thing itself; the other is the vehicle by which the thing is transferred from the court to the parties. The whole purpose and object of procedure is to make the powers of the court fully and completely available for justice. The most perfect procedure that can be devised is that which gives opportunity for the most complete and perfect exercise of the powers of the court within the limitations set by natural justice. It is that one which, in other words, gives the most perfect opportunity for the powers of the court to transmute themselves into concrete acts of justice between the parties before it. The purpose of such a procedure is not to restrict the jurisdiction of the court over the subject matter, but to give it effective facility in righteous action. It may be said in passing that the most salient objection which can be urged against procedure today is that it so restricts the exercise of the court's powers by technicalities that that part of its authority effective for justice between the parties is many times an inconsiderable portion of the whole. The purpose of procedure is not to thwart justice. Its proper aim is to facilitate the application of justice to the rival claims of contending parties. It was created not to hinder aid delay but to facilitate and promote the administration of justice. It does not constitute the thing itself which courts are always striving to secure to litigants. It is designed as the means best adapted to obtain that thing. In other words, it is a means to an end. It is the means by which the powers of the court are made

effective in just judgments. When it loses the character of the one and takes on that of the other the administration of justice becomes incomplete and unsatisfactory and lays itself open to grave criticism." (Manila Railroad Co. vs. Attorney-General, 20 Phil. [1911], 523, 529-530.)

"The only purpose of the law in requiring the presentation of the certificate in question is to evidence duly that the deposit required by law has been made. If the deposit has in fact been effected in the form and time prescribe, the fact that the corresponding receipt therefor has not been issued, or has been destroyed or mislaid, or the failure to present the same in due time, should not affect the remedy.

"To interpret the law otherwise is to sacrifice the ends of justice to technicalities. It is true that procedural laws are no other than technicalities in their entirety, but they were adopted not as ends in themselves for the compliance with which courts have been organized and function, but as means conducive to the realization of the administration of the law and of justice. The provisions of the Code of Procedure should be liberally construed in order to promote the purpose of the legislator, which is to assist the parties in obtaining speedy justice (section 2, Code of Civil Procedure). It is the general and constant practice of courts to give every opportunity to the parties to have exceptions and appeals from reviewable rulings and decisions taken before the superior court, unless such action is manifestly contrary to the law. (Garcia vs. Ambler and Sweeney, 4 Phil., 81.) Technicalities, when they are not an aid to justice, deserve scant consideration from the courts. (Alonso vs. Villamor, 16 Phil., 315.)" (Blanco vs. Bernabe and Lawyers Cooperative Publishing Co., 63 Phil. [1936], 124, 127-128.)

En el presente caso se evidencian los efectos perniciosos de los tecnicismos prooales esgrimidos para frustrar los fines de la administracion de justicia.

Aparentemente, considerado el asunto en su fondo, el demandante en la causa de desahucio tiene la razon de su parte. Después de oír las pruebas, el Juzgado Municipal dictó decision a su favor. Los demandados apelaron de la decision, pero lejos de atacar dicha decisión en su fondo, lejos de tratar de demostrar en el Juzgado de Primera Instancia que dicha decision es injusta, recurren a un tecnicismo para frustrar por medios indirectos los efectos de dicha decisión. Esta actitud de los demandados no es compatible con la fe que tiene en la justicia de su causa.

No creemos propio ni Justo que este Tribunal Supremo se preste a cooperar en la ejecucion de una estrategia procesal que elude afrontar los verdaderos méritos de una causa, para frustrar por medios indirectos y aviesos la justicia de una causa.

Las filípicas fulminadas por este Tribunal Supremo contra los tecnicismos procesales adquieren mayor peso y trascendencia si se tiene en consideración que el tecnicismo invocado por la parte recurrida en el presente recurso es básicamente erróneo.

Está fundado sobre la falsa premisa de que la alegación del requerimiento mencionado en el artículo 2 de la Regla Judicial 72 es esencial en una demanda de desahucio para conferir jurisdicción al Juzgado Municipal.

Ya desde hace unos cuarenta años este Tribunal Supremo declaró de una manera terminante, inequívoca, definitiva, que el Juzgado de Paz de Nagcarlan, Laguna, obró dentro de su jurisdicción cuando conoció, tramitó y falló una demanda de desahucio en donde, al igual que en la demanda objeto de la presente controversia, se ha omitido la alegación de un requerimiento para pagar los alquileres o para hacer cumplir las condiciones del contrato de arrendamiento.

"Because the vendors failed to pay the quarterly rents stipulated by and between themselves and the purchasers, on September 9, 1904 (that is to say, two years and seven months after the execution of the aforementioned contract), Agripino Viriña brought suit against the vendor Felipe Dorado in the justice of the peace court of Nagcarlan, presided over by Vivencio Zulalbar. The complaint reads as follows

"Now comes the plaintiff and sets forth: (1) That the defendant, on March 25th of last year 1903, rented from the petitioner for ten pesos (P10) per month, the three parcels of coconut land described as follows. The first parcel is situated in the barrio of Buenavista of this district and is bounded on the N., E. and W. by a creek, and on the S. by the coconut land of Vicenta Artiaga; the second is in the same barrio and is bounded on the N. by the land of Martin Tobaña, on the E. by the coconut land of Eulalio Reyes, on the S. by a creek and the coconut land of Maximo Pinuela, and on the W. by the land of Honorio Tobaña; and the third parcel is in the barrio of Lawaguin, also of this district, and is bounded on the N. by the land of Isidoro Dorado, on the E. by the coconut land of Vicente Ortiz, on the S. by a creek, and on the W. By the coconut land of Damiana Corra; (2) that since the said date of the lease the defendant has failed to fulfill his obligation of paying the monthly rent; (3) that plaintiff prays the court to render judgment restoring to the plaintiff the possession of the leased lands, and likewise ordering the defendant Felipe Dorado to pay the sum of P174, the amount of rent retained by the defendant, together with the costs of the proceeding and other losses and damages." (Dorado and Vista vs. Viriña, 34 Phil., 264, 270-271.)

* * * * *

"Agripino Viriña stated that from March until August, 1904, he repeatedly demanded from Felipe Dorado payment of what the latter was owing him as rent of the lands sold, and that moreover the said debtor made no attempt to repurchase the lands in litigation.

"The demand upon the debtor for the payment of the rent owing is an indispensable requisite in order that the lessor may bring an action for detainer against the lessee, who thenceforth is considered a deforciant. Furthermore, the computation of the year fixed by law as determining the jurisdiction of the justices of the peace to try a summary proceeding for detainer, must be counted from the date on which such demand was made. It is proven that on various occasions from Lent, February to April, 1904, Agripino Viriña demanded of Felipe Dorado the payment of rents owing, and therefore when Viriña filed the action for detainer in September of the same year, he did so within the year required by law. Consequently the justice of the peace of Nagcarlan clearly acted within his jurisdiction when he heard and decided the action for detainer." (Id., Id., Id., pp. 275-276.)

Como se verá en lo que se acaba de acotar, eh el asunto de Vista contra Viriña, aunque la demanda de desahucio es relativamente larga, debido principalmente a que contiene una descripción detallada del terreno objeto de desahucio, guarda absoluto silencio sobre el requerimiento para el pago de alquileres, que es elemento esencial, según este Corte Suprema, para que la acción del demandante pueda prosperar.

Es decir, es necesario probar que se ha hecho dicho requerimiento para que el demandante tenga derecho de acción, pero dicho requerimiento, aléguese o no en la demanda, no afecta a la jurisdicción del juzgado de paz o del juzgado municipal.

Considerando el hecho de que el procedimiento señalado por el actual reglamento en asuntos de desahucio, incluyendo lo referente al requerimiento del pago de alquileres y a la inclusión de un modelo de demanda, no es más que, una reproducción substancial del procedimiento indicado por la Ley No. 190 de la Comisión de Filipinas, ley que estaba vigente al tiempo de promulgarse la decisión del Supremo Tribunal en el asunto de Vista contra Viriña, es evidente que la jurisprudencia sentada en dicho asunto puede y debe aplicarse en todo su vigor al presente litigio.

Por otro lado, la práctica de preparar formularios para guía y ayuda de los interesados, es general no solo en los tribunales de justicia, sino en todas las oficinas del Gobierno.

En realidad, sin dichos formularios de modelo de escritos y documentos quedaria grandemente entorpecido el funcionamiento del Gobierno.

La práctica esta consagrada en numerosas leyes y, si esto no fuera suficiente, hasta en la misma Constitución. Los

redactores de la misma no han vacilado en honrar semejante práctica con una provisión constitucional, fijando expresamente el modelo del juramento de cargo del Presidente de Pilipinas.

Durante los numerosos lustros en que nuestro Gobierno ha venido funcionando con la ayuda de formas y modelos de escritos y documentos oficiales, legales o administrativos, no consta que en un solo caso se haya declarado insuficiente e ineficaz el haber seguido o copiado semejantes formas o modelos.

La eficacia de los formularios para documentos o escritos descansa no solo en la vigencia de las leyes, reglas, ordenanzas, órdenes ejecutivas o administrativas, y otras disposiciones de indole legal, sino en la seriedad y buena fe de los departamentos oficiales, sean legislativos, Judiciales o ejecutivos, o de las oficinas, juntas, y demás agencias autorizadas para, dictar dichas disposiciones legales.

El día en que se decidiese que el atenerse a tales formula copiar las formas, fórmulas, o modelos contenidos en ellos, no es suficiente para cumplir los pbjectivos o propósitos para los cuales se han preparado, tal decisión producirá efectos desastrosos de auma trascendencia y, probablemente, el caos en numerosas oficinas del gobierno, y destruirá la confianza pública en la rectitud y buena fe de las autoridades que han preparado tales formularies.

Según la Constitución, la soberanía reside en el pueblo y todo poder de gobierno dimana de él. Por tanto, bajo nuestro sistema de democracia representativa, los tribunales son, al propio tiempo, servidores y representantes del pueblo. Si han de ser fieles a sus funciones representativas, deben ofrecer los medios adecuados para que el pueblo pueda disfrutar de una eficiente, expedita y recta administracion de justicia. Uno de ellos, es la simplificación de los procedimientos.

No deben neutralizarse ahora los efectos saludables de una innovación que desplaza y echa a un lado la cáscara fósil de un rígido formuliamo que ha contribuído a hacer de la práctica forenae una suerte de liturgia de ritos misteriosos, utilizada por ingeniosos abogadoa, según el prejuicio de los profanos, para hacer de la administración de justicia, no un instrumento para fomentar los éticos intereses de la sociedad y contribuir a la paz, al bienestar y a la felicidad de los individuos, a base de los principios cristianos de igualdad, fraternidad, caridad y democracia, sino un arte de prestidigitación para provecho de los mas listos y menos escrupulosos.

El profesor Joseph H. Drake, de la Universidad de Michigan, ha dicho: "The end and aim of Bentham's life work was codification and, although he did not live to see the Reform Bill of 1832, it is generally admitted that his lifelong insistence on the simplicity, possibility and supreme desirability of law reform was one of the principal instrumentalities in starting the making over of law by legislative enactment, which has been the most characteristic feature of legal history of England during the century that has elapsed since his death." Y añadet "All of our lawyers, judges and legislators who are trained in the traditions of the Common Law hold with characteristic and commendable professional conservatism to the good that is and has been in our legal system, insisting, too, upon the prime virtue of a system of law that is certain, but apparently forgetting that law is not an end in itself and as such to be brought to a state of formal and static perfection, but that the end is the good of society. The public is crying put against our crystallized and inelastic theory and practice of law. The proper application of the idea of law as purpose would, in many cases, loosen our legal shackles and open the way out of our legal difficulties."

El Sentido juridico de la humanldad se manifiesta en el generoso esfuerzo de los innovadores y renovadores del sistema procesal, encaminado a simplificar la práctica forense, a ajustarla a normas más sencillas, a ponerla mas y más al alcance del comun de los hombres, a hacerla dúctil y dotarla de una plasticidad mas razonable y científica, a vivificarla con la savia del progreso, a inyectarle sangre platórica y joven, a dotarla de la dinémica resiliencia que le permita amoldarse naturalmente a las exigencias y necesidades sociales de cada momento histórico a que

estuviere llamada a rendir servicio. Ese esfuerzo responde al impulso irresistible del progreso, al afán ético de la eudemonía, a la sed insaciable de mejoramiento en todos los ordenes de la vida que ha vendido agudizándose en los modernos tiempos, y es inútil y hasta peligroso tratar de contrarrestarlo. Es la polarización de las incontenibles aspiraciones de las grandes masas humanas que, en el limbo obscuro del fondo de los estratos sociales y al través de las edades y de los milenios, han venido soñando en el ideal de compartir con las minorías privilegiadas las mismas oportunidades de la vida, en un ambiente de sincera hermandad, de genuina justicia social, de opulenta satisfacción del espíritu. Y en ultimo análisis, esas son las masas que han hecho de Bataan la epopeya que salvó India y Australia y preparó el camino para el retorno de la libertad al Pacífico occidental; son las que han formado las fuerzas anónimas de la resistencia que, sin dobles ni equívocas lealtades, nunca jamás transigió con el régimen opresor de los japoneses en Filipinas, frontando las carnicerías en masa, los sufrimientos de las zonificaciones, las torturas del Fuerte Santiago, mientras sembraban las calles con los cadáveres de los que morían de hambre frente a la abundancia de las minorías a quienes el enemigo prodigó riquezas y poderes. Ellas son las que alimentaron con cuerpos humanos los hornos macabros de Maidanek y las que salvaron Europa en el milagro de Stalingrad. Por ellas predicó Roosevelt el evangelio de las cuatro libertades y el sueño de mil generaciones se realizó en la Carta Mundial de San Francisco, unificando, al fin, a toda la humanidad en un abrazo de fraternidad universal.

Es por esas masas anónimas por las que todos los reformadores sociales han desplegado las energías de sus poderosas mentalidades; por las que filósofos y demás pensadores han escrutado los misterios y problemas de la vida humana, de lo finito y de lo infinito, de la materia y del espíritu, de la naturaleza captable por los sentidos y del más allá, los enigmas del pasado y las incógnitas del porvenir; por las que Gautama Siddhartha renunció a los poderes y privilegios de la realeza para ganarse la amistad y el amor del prójimo mediante la piedad, la paciencia y la bondad; por las que Cristo predicó la caridad, la sublime síntesis de las más nobles virtudes humanas, y sufrió la crucifixión en el Calvario en el emocionante clímax del drama de todos los siglos; por las que Rizal, una de las figuras morales más grandes que ha producido la humanidad, sucumbió en Bagumbayan, el trágico epílogo de una vida fecunda, consagrada a la libertad y a la justicia, a la reivindicación de un pueblo, a la dignificación de una raza.

El Supremo Tribunal que, cediendo a las indicaciones reformadoras y altruistas de los grandes pensadores legales, y de los filósofos del derecho, adoptó el modelo que motiva la presente discusión, como un paso decisivo hacia adelante en el camino del mejoramiento de nuestro sistema procesal, para mejor ajustarlo a los principios que interpretan el acelerado palpitar de la vida del presente, no puede ni debe ahora volverse atrás sin frustrar la eficacia de sus funciones constitucionales como uno de los organismos representativos de la soberanía del pueblo. Antes bien, deberá seguir adelante, ampliar y completar las reformas iniciadas, si ha de ser fiel a su misión social.

Después de todo, los procedimientos no son mas que un medio para alcanzar el fin fundamental que es la razón de ser de los tribunales, o sea, la administración de justicia. Por necesidad, los procedimientos más apropiados para dicho propósito siempre serán los mejores y más sablos.

Tanto en asuntos de usurpación de bienes raíces como en litigios por detención de bienes inmuebles, la demanda que inicia la acción y que, por tanto, confiere jurisdicción a los juzgados de paz y municipales, recibe la designación de demanda de desahucio.

Esta es una designación utilizada por igual para unos y otros asuntos tanto por la Ley No. 190 de la Comisión de Filipinas, o sea el antiguo Código de Procedimiento Civil, como por el vigente Reglamento promulgado por el Supremo Tribunal.

Si la teoría de la parte recurrida fuera buena o sea, que el requerimiento mencionado en el artículo 2 de la Regla

72, debe ser alegado como elemento esencial en una demanda de desahucio, para que la misma pueda conferir jurisdicción a los juzgados de paz o municipales en donde se presente, tendría que ser buena no solamente con relación a asuntos de detentación, sino también con respecto a pleitos por usurpación de bienes raíces y sobre el derecho de posesión de un vendedor o de un comprador de un inmueble.

Ahora bien, ¿cómo compaginar esta teoría con el hecho de que el requerimiento mencionado en el artículo 2 de la Regla 72 sólo se exige en determinados asuntos sobre detentación?

Dicho artículo está concebido como segues: "Landlord to proceed against tenant only after demand—No landlord, or his legal representative or assign, shall bring such action against a tenant for failure to pay rent due or to comply with the conditions of his lease, unless the tenant shall have failed to pay such rent or comply with such conditions for a period of fifteen days, or five days in the case of building, after demand therefor, made upon him personally, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no persons be found thereon."

Es claro, por lo que se acaba de acotar, que en asuntos de usurpación de inmuebles no se establece el mismo requisito de un previo requerimiento para que se pueda entablar la demanda de desahucio.

Efectivamente, sería el colmo de los absurdos el exigir que el dueño de un inmueble que ha sido usurpado mediante intimidación, amenaza, o fuerza, para que pueda acudir a los tribunales, necesite valerse previamente del procedimiento diplomático de cursar un requerimiento verbal o escrito al violento usurpador.

Esto sería lo mismo que si se estableciere en Derecho Internacional un precepto que requiera que una nación atacada a la fuerza o invadida por el ejército de un imperio conquistador no pueda valerse de las armas para repeler la invasión, sin servir, previamente, por las vitas diplomáticas, un ultimatum redactado de conformidad con las reglas protocolarias.

El hecho de que en litigios por usurpación de bienes raíces no se requiere un requerimiento previo antes de que la víctima de la usurpación pudiera acudir a los tribunales en demanda de remedio, pone en evidencia la teoría de la parte recurrida de que dicho requerimiento debe ser alegado, como un hecho esencial, para conferir jurisdicción a dichos tribunales. No exigiéndose por el Reglamento dicho requerimiento ¿qué requerimiento va a alegar la víctima de la usurpación de sus propiedades antes de presentar demanda contra el usurpador?

Aunque, según los hechos que se desprenden de autos, la causa iniciada por la demanda de desahucio que ha dado origen a la presente discusión, lo es por detentación de una finca, parece claro que se funda, no sobre la morosidad en el pago de alquileres, ni sobre la infracción de las condiciones de un contrato de arrendamiento, sino sobre la expiración del mismo.

Siendo este el caso, es evidente que, bajo los términos del artículo 2 de la Regla 72, el demandante podía entablar la demanda de desahucio, sin necesidad de previo requerimiento alguno.

Dicho artículo dispone que el requerimiento es necesario para exigir el pago de alquileres morosos o el cumplimiento de las condiciones del contrato de arrendamiento.

No hay nada de autos que la demanda de desahucio se haya presentado por morosidad de alquileres, ni por incumplimiento de las condiciones del contrato de arrendamiento.

La demanda de desahucio, de hecho, se ha presentado a base de la caducidad o terminación del contrato de arrendamiento. Habiendo caducado o terminado el contrato de arrendamiento, ya no hay ninguna condición que hacer cumplir. Las condiciones de un contrato de arrendamiento son parte del contrato. Habiendo caducado o terminado el contrato, o sea, el todo, las partes siguen la suerte del todo.

Si en el caso de autos no había necesidad de un requerimiento previo para entablar la demanda de desahucio, y el demandante no necesitaba, para que su acción prosperara, probar que ha hecho semejante requerimiento, preceptuándose en el Código Civil que "En todo caso cesa el arrendamiento, sin necesidad de requerimiento especial, cumplido el término" (artículo 1581), ¿que principio o reglas de lógica puede justificar la teoría de que, sin alegar el requerimiento que no necesitaba hacer, no pudo el demandante conferir con su demanda de desahucio la jurisdicción que se discute al Juzgado Municipal?

Pasemos ahora a la cuestión sobre si el "mandamus" es el recurso apropiado, siendo evidente que el recurrente hubiera podido interponer apelación contra la orden del Juez Díaz que motiva la controversia.

Si el recurrente hubiera interpuesto apelación, ésta requeriría meses antes de que pueda decidirse. Si en la apelación se sostiene la teoría del demandante, el asunto volverá al Juzgado de Primera Instancia, en donde las partes practicarán pruebas, y luego se dictará decisión que, en su día, también podrá ser objeto de una segunda apelación ante este Supremo Tribunal, con el resultado de que, tal vez, transcurrirá uno o dos años antes de que la causa quedara fallada definitivamente, frustrándose así el propósito legislativo de que las causas de desahucio deben ser tramitadas con prontitud dado su carácter sumario.

Es evidente, por tanto, que la apelación contra la orden que motiva la queja del recurrente no es un remedio expedito.

Concluimos, por tanto, que el Juzgado Municipal tenía jurisdicción sobre la causa de desahucio iniciada por la demanda de autos; que el requerimiento mencionado en el artículo 2 de la Regla 72 es solo necesario en las causas de desahucio entabladas por el arrendador para cobrar alquileres morosos o para exigir el cumplimiento de las condiciones del contrato de arrendamiento, pero no en todos los otros asuntos de usurpación o detención de bienes inmuebles; que la alegación de dicho requerimiento en una demanda de desahucio no es un elemento esencial para conferir jurisdicción a un juzgado municipal o de paz; que una demanda redactada de conformidad con el modelo 1 del Reglamento Judicial es suficiente para todos los fines legales de la demanda de desahucio, incluyendo el conferir jurisdicción a los juzgados de paz y municipales; que la orden del Juez Pompeyo Díaz que motiva el recurso es

errónea y, por tanto, debe ser revocada; que el recurso de

"mandamus" es el remedio apropiado en este asunto.

FERIA, J., with whom concur JARANILLA DE JOYA, and PABLO, JJ., dissenting:

This is a petition for mandamus to compel the respondent Judge to take cognizance of, or proceed to try on the merits, the appealed case which the said respondent dismissed, upon motion of the adverse party, on the ground that the Municipal Court had no jurisdiction to try the case on the merits, because the complaint does not allege facts showing that the action is one of unlawful detainer falling within its jurisdiction, and therefore, the Court of First Instance could not try the case on the merits in the exercise of the latter's appellate jurisdiction.

The complaint filed in this case says: "Plaintiff alleges that defendants unlawfully withhold from him the possession of the building located at No. 503 Sto. Cristo St., Manila. Wherefore he prays that he be restored to the possession of said premises with damages and costs."

The respondent defendants filed their answer and alleged as defenses that the court has no jurisdiction over the subject-matter of the action, and that the complaint does not state facts sufficient to constitute a cause of action.

During the trial petitioner offered to prove, through his own testimony and a copy of a letter, Exhibit A, that

respondent Yao Boom Sim was required on March 16, 1945, to vacate the premises by April 16, 1945. Attorney for defendants objected to the admission of the evidence on the ground that it tended to prove a fact not alleged in the complaint, and the Municipal Court sustained the objection. Petitioner then filed a petition for mandamus with the Court of First Instance to compel the Municipal Court to admit said evidence, and the petition was granted by the branch of the court presided over by Judge Mamerto Roxas, and said Municipal Court had to admit the evidence and render judgment for the petitioner. On appeal, the Court of First Instance of Manila presided over by the respondent Judge Pompeyo Diaz, on motion of the respondent defendants, dismissed the case on the ground that it has no appellate jurisdiction to try the case on the merits, since, under the complaint filed and considered as reproduced in the Court of First Instance according to law (section 7, Rule 40), the Municipal Court had no original, jurisdiction.

Before proceeding, it is Important to distinguish forcible entry from unlawful detainer.

Forcible entry, according to the first four lines of section 1, Rule 72, of the Rules of Court, is the act a person of depriving another of his possession of a land or building by any one of the following means, to wit: force, intimidation, threat, strategy or stealth, where the illegal possession of the trespasser does not exceed one year. The latter's possession is illegal from the very beginning, and for that reason it is not necessary that plaintiff should make a demand, to quit or for possession before filing an action within one year from the dispossession.

Unlawful detainer, on the other hand, is defined in the same section 1 of Rule 72 as the act of withholding the possession of a land or building from another entitled to it, after the expiration or termination of the right of the illegal detainer to hold possession by virtue of a contract, express or implied, where one year had not yet elapsed from the time the originally legal possession had become illegal, and for that reason, it is necessary to determine when the originally legal possession of the detainer became illegal.

The ground of plaintiff's action of unlawful detainer does not appear in the complaint, but according to petitioner's counsel, it is the expiration or termination of the contract of lease between the parties which was from month to month, Therefore, section 1 of Rule 72 is applicable, and not section 2 which refers to termination of a lease for failure of the tenant to pay the rents or to comply with the other conditions thereof.

In the case of *Gumiran vs. Gumiran* (21 Phil. 174, 179) this court held that it is a general rule of pleading and practice that in all pleadings filed in courts of special jurisdiction, the special facts giving the court jurisdiction must be specially pleaded and set out. Unless these special jurisdictional facts are alleged the complaint is demurrable. The complaint in this case not containing allegations showing the special jurisdiction of the justice of the peace, the same would have been demurrable had it been filed in the court of a justice of the peace."

The complaint in the above-cited case filed in the Court of First Instance simply-alleged that "the plaintiff has been 'deprived' of the land of which he is and has been the owner for a long period." A demurrer was filed by the defendant and the Court of First Instance sustained the demurrer on the ground that the said court had no jurisdiction. On appeal, the Supreme Court reversed the order of the court below on the ground that the latter, and not the justice of the peace, had jurisdiction over the case, because "it is quite clear, from an examination of the complaint, that, had the same been presented in the court of the justice of the peace, it would have been demurrable, for the reason that the facts alleged fail to show that the plaintiff had been dispossessed by any of the methods mentioned in said section 80", and that deprivation of possession by any other means than those mentioned in said section 80, does not constitute forcible entry within the jurisdiction of a justice of the peace. It is obvious that to deprive a person of the possession of a land or building is to turn him out of that possession. To deprive one of a thing is to dispossess, strip, despoil or rob him thereof. (Webster's Dictionary) If a complaint which alleges that "the plaintiff has been deprived of the land of which he is and has been the owner for a long

period," does not contain allegations showing the special jurisdiction of the justice of the peace, for it does aver that the deprivation of possession was done by one of the means provided in section 80 of Act 190, and took place within one year immediately preceding the filing of the complaint, a fortiori, a complaint of forcible entry which merely states that "the plaintiff alleges that defendant has unlawfully turned him out of possession" (a literal copy of Form 1) does not show the special jurisdiction of the justice of the peace or municipal court.

This well-established rule of pleading has been also applied by this Supreme Court in the case of *Tengco vs. Jocson* (43 Phil. 715, 780-722) in which this court said;

"With reference to the second question above presented, it may be said that the Election Law makes the Court of First Instance a court of special jurisdiction, and provides a special procedure for hearing and determining a motion of protest in election cases. The Court of First Instance, being a court of special jurisdiction, has no jurisdiction over an election protest until the special facts upon which it may take jurisdiction are expressly shown in the 'motion of protest.' There is no presumption in favor of the jurisdiction of a court of limited or special jurisdiction * * * (*Kemp's Lessee vs. Kennedy*, 5 Cranch [U.S.], 173; *Hayhew vs. Davis*, 16 Fed. Cases No. 9247; *Furgeson vs. Jones*, 17 Ore., 204; *Grignon vs. Astor*, 2 Howard, 319; *Walker vs. Turner*, 9 Wheaton, 541; *Glos vs. Woodard*, 202 Ill., 480) *King vs. Bates*, 80 Mich., 367; *Clark vs. Norton*, 6 Minn., 277; *Matter of Baker*, 173 33. Y., 249; *Martin vs. Martin*, 173 Ala., 106.) * * * From all of the foregoing decisions, we must conclude that if the 'motion of protest' does not show upon its face that it was presented by a 'registered candidate voted for,' the Court of First Instance acquires no jurisdiction to hear and determine the petition or motion."

The learned Jurist Justice Street of this Court, in his concurring opinion in the case of *Gonzalez vs. Sales*, (49 Phil. 1), said that "if the complaint shows the jurisdictional facts necessary to sustain the action and the remedy sought is merely to obtain possession, the court of the justice of the peace will have jurisdiction for the purpose of giving possession to the plaintiff * * *."

And it is a well-established rule laid down by the courts in the United States, and set forth in 35 C. J. 617-619, that "a declaration, petition, complaint, or statement in an action commenced before a justice is sufficient, however informal, if it sets out facts constituting a cause of action in such a way as clearly to apprise defendant of the nature of the demand against him; but to this extent it is indispensable that the, declaration, petition, complaint, or statement Should go, and all the facts material to the cause of action and essential to the jurisdiction of the justice must be set forth," (*Italics supplied.*)

The special jurisdictional facts which must be alleged in a complaint of forcible entry and unlawful detainer to give jurisdiction to the justice of the peace or municipal court, are those which show *prima facie* that the facts alleged in the complaint constitute a forcible entry or unlawful detainer, which are the only actions relating to real property of which the justice of the peace or municipal court has jurisdiction. In the case of *Melliza vs. Towle and Mueller*. (34 Phil. 345), this Court laid down the doctrine that "an action in the Court of First Instance for recovery of possession of real estate will not be considered an action for unlawful entry and detainer under section 80 of the Code of Civil Procedure where the complaint does not allege any of the facts required by said section to be alleged in a complaint in such an action." (*Italics supplied* And the special jurisdictional facts to be alleged in a complaint for recovery of money and personal property are those showing that the amount claimed, or the value of the property sought to be recovered, falls within the jurisdiction of court, that is, less than six hundred pesos. If said amount or value is not alleged in the complaint, the justice of the peace has no jurisdiction, because there is no presumption of jurisdiction in courts of special or limited jurisdiction.

The decision of the majority of the Court, however, says that the doctrine laid down in the said case of *Melliza vs. Towle and Mueller* can not be relied upon, because "the complaint in that case does not allege, in the very

language of the court 'that possession was unlawfully withheld after the expiration or termination of the right to hold possession by virtue of a contract, or in any other manner required by section 80 (of the former Code of Civil Procedure), and evidently is not in conformity with the form" If, according to the decision in said case, the complaint filed (in said case) was not of forcible entry and detainer, because it did not allege the facts required in section 80 of Act 190, how could the complaint in the present case which does not allege facts but only the conclusion of law that "defendants unlawfully withhold from him (plaintiff) the possession of the building" be considered as a complaint of unlawful detainer?

The majority also states that the above-quoted "concurring opinion of Justice Street in *Gonzales vs. Salas*, (49 Phil. 1), and the ruling laid down in *Lizo vs. Carandang*, (2 Off. Gaz. [No. 3] March, 1943 as quoted below) are correct " * * * There is, however, nothing in said opinion or in said ruling showing the insufficiency of the form in question." In reply, suffice it to say that if, according to said opinion and ruling, a complaint is sufficient where it alleges the jurisdictional facts constituting an action of forcible entry or detainer, it necessarily follows a *contrario sensu* that a copy of Form I is not sufficient because it does not allege said jurisdictional facts.

Now, what are the facts which must be alleged in a complaint to constitute an action of unlawful detainer arising out of the termination or expiration of the term of a contract of lease between landlord and tenant? Evidently, they are the allegations that the plaintiff is the landlord and the defendant is the tenant; that the term of the lease has already expired, and that notwithstanding the fact that the lessee or tenant was required on a certain date to quit or vacate the premises (which will show that one year had not elapsed since then to the filing of the complaint), he refused or failed to do so. Without such allegation of notice to quit or demand for possession, a mere statement that defendant withholds from plaintiff the possession of the premises would not show that one year had not elapsed since tenant's possession has become illegal, and the action for restoration of possession by the landlord against the tenant would not and could not be an action of unlawful detainer. Because, as already stated, there is no presumption of jurisdiction in courts of limited or special jurisdiction.

In the case of *Lucido and Lucido vs. Vita*, this Court held the following:

"The question of the jurisdiction of the justice of the peace was properly and timely raised by demurrer. The justice of the peace reached the conclusion that he did not have jurisdiction to try said causes. He held that the first action (7257) had not been commenced within, one year after the alleged illegal possession and that there was another action pending between the same parties for the same cause. He held with reference to the second (7258) that the illegal possession of a tenant begins from the date of his failure to pay the stipulated rents, and that, inasmuch as a number of years had expired without the payment of the stipulated rents, he had no jurisdiction over said cause. With that conclusion of the justice of the peace we cannot agree. It is true that the landlord might, upon the failure of the tenant to pay the stipulated rents, consider the contract broken and demand immediate possession of the rented property, thus converting a legal possession into an illegal possession. Upon the other hand, however, the landlord might conclude to give the tenant credit for the payment of the rents and allow him to continue indefinitely in the possession of the property. In other words, the landlord might choose to give the tenant credit from month to month or from year to year for the payment of the rent, relying upon his honesty or his financial ability to pay the same. During such period the tenant would not be in illegal possession of the property and the landlord could not maintain an action of *desahucio* until after he had taken steps to convert the legal possession into an illegal possession. A mere failure to pay the rent in accordance with the contract would justify the landlord, after the legal notice, in bringing an action of *desahucio*. The landlord might, however, elect to recognize the contract as still in force and sue for the sums due under it. It would seem to be clear that the landlord might sue for the rents due and unpaid, without electing to terminate the contract of tenancy." (*Lucido and Lucido vs. Vita*, 25 Phil. 414, 425).

The ruling or principle laid down in the case above quoted regarding the necessity of alleging in a complaint notice to quit and the date thereof, is applicable not only in case of tenant's failure to pay rents or to comply with

the other conditions of the contract of lease, but also in case of expiration of the term thereof if the landlord wants to terminate the lease and to have the lessee vacate the premises. Because in both cases notice to quit is the expression of the purpose and intention of the landlord to terminate the lease. If the landlord does not give such notice to the tenant, the presumption is that he does not want to terminate the lease notwithstanding the lessee's failure to pay the rents, or the expiration of the term of lease, and that in the latter case he allows the tenant to continue indefinitely as lessee by tacit renewal. If a contract of lease is not terminated by the landlord by notice to quit, the tenant's possession does not become illegal and, therefore, no action of unlawful detainer would accrue, and the justice of the peace or municipal court would have no jurisdiction.

That notice to quit is a prerequisite to an action by the landlord against the tenant for restoration of possession, and must be alleged in a complaint of unlawful detainer not only to state a cause of action, but to set forth jurisdictional facts, that is, 'that the tenant's possession has become illegal and one year has not elapsed since the notice to quit was given up to filing of the complaint, is in conformity with a well-established rule recognized by the courts in the United States as well as with the provisions of articles 1565 and 1566 of our Civil Code.

The following rule laid down by the courts in the United States is found in *Corpus Juris*:

(S 1779.) Notice to Quit or demand for Possession.—(1) Necessary. An action of ejection will not as a general rule lie against a tenant without a prior notice to quit, * * *. *Horseys vs. Horseys*, 4 Del., 517; *Mount Palatine Academy vs. Kleinschnitz*, 28 Ill., 133; *Jackson vs. Hughes*, 1 Blackf., 421; *Eggers vs. Paustian*, 190 Iowa, 638; 180 NW., 837, 875, (cit Cyc) (dictum); *Cornellison vs. Cornellison*, 1 bush, 149; *Sheackelford vs. Smith*, 5 Dana, 232; *Minton vs. Steinhauer*, 243 Mo., 51; 147 SW., 1014; *Den vs. Westbrooks* 15 N. J. L., 371; 29 Am. 692; *Den vs. Mackey*, 2 N. J. L., 420; *Jackson vs. Nieven*, 10 Johns., 335; *Veditz vs. Levy*, 1 Pa. Co., 266; *Doe vs. Morse*, 1 B. & Ad., 365; 20 Ecl., 519; 109 Reprint, 822; *Doe vs. Keith*, 4 U. C. Q. B. O., 86. (36 C. J., 609.)

(S 55). As a rule notice to quit or demand for possession is necessary only where the relation of landlord and tenant exists, * * * U. S.—*Doe vs. Johnston*, 7 F. Cas. No. 3,958, 2 McLean, 323; *Schoonmaker vs. Doolittle*, 118 Ill. 605; 8 NE., 839; *Murphy vs. Williamson*, 85 Ill., 149; *McCaslin vs. State*, 99 Ind. 428; *Eberwine vs. Cook*, 74 Ind. 377; *Davis vs. Clinton*, 79 SW., 259; 25 Kyl., 2021; *Lewis Heirs vs. Ringo*, 3 A. K. March, 247; *Barlow vs. Bell*, 4 Bibb 106; *Tonopah, etc., R. Co. vs. Fellanbaum*, 32 Nev., 278, 282; 107 P., 882; LRA 1918D 584 (quot. Cyc.); *Den vs. Wade*, 20 N. J. L. 291; *Thackray vs. Cheeseman*, 18 N. J. L., 1; *Livingston vs. Tanner*, 14 N. Y. 64 (rev 12 Bart., 481); *Jackson vs. French*, 3 Wend, 337; 20 AMD 699; *Jackson vs. Fuller*, 4 Johns, 215 *Jackson vs. Deyo*, 3 Johns., 422; *Logan vs. Quigley*, 11 A 92; *Carlson vs. Curran*, 42 Wash. 647; 85 P., 627; 6 LRANS., 260; *Nolan vs. Fox*, 15 U. G. C. P. 565; (19 C. J. 1070)

Under the provisions of articles 1565 and 1566 of the Civil Code, where the landlord does not or fails to give the tenant notice to quit or vacate the premises before or at the expiration of the term of the contract of lease, the possession of the tenant does not become illegal, and an action of unlawful detainer will not lie, because the law considers the contract of lease as impliedly or tacitly renewed (*tácita reconducción*) and Manresa, in his commentaries on articles 1565 and 1566 of the Civil Code, has to say the following:

“El aspecto negativo del hecho que origina la *tácita reconducción*, según hemos dicho, la ausencia de todo requerimiento anterior. Si el requerimiento se ha verificado, la *reconduccion* no tiene lugar. La razón es obvia; el requerimiento muestra de un modo expreso el propósito y la intención de poner término al arrendamiento, y contra el consentimiento expreso no puede prevalecer el tácito.

"Pero aun más. Nosotros creemos que la ley en el artículo 1566 establece una verdadera presunción fundada en los hechos. Supone, desde luego, un consentimiento tácito por falta (parte) del arrendatario, fundándose en el hecho inequívoco de continuar en el disfrute de la finca después de terminado el arriendo, y presume también el consentimiento del arrendador mediante la falta de requerimiento, y su aquiescencia, tolerancia o no

oposición a que el arrendatario continúe disfrutando. En cuanto al arrendador, el consentimiento puede en realidad no existir, pero la ley lo presume siempre que se reúnan las expresadas circunstancias. Su aquiescencia puede obedecer a un descuido, una ausencia, enfermedad, etc., suya o de sus representantes voluntarios o legítimos, y sin embargo, la ley aun así presume el consentimiento * * * (Comentarios al Código Civil Español por Manresa, cuarta edición, Tomo X, páginas 540-541.)

"Entendido de este modo el sentido de la materia que estudiamos, desaparece todo asomo de contradicción entre el artículo 1565 y el 1566. No es menester requerimiento para que el arreadamiento concluya el día prefijado, y sin necesidad de él, desde luego fenece y se extingue; pero sí es menester ese requerimiento para que, supuesta la permanencia en el disfrute, no se entienda que ha nacido un nuevo contrato de arrendamiento. (do. do., 542)

The conclusion of the majority that a lessee who continues in possession upon the expiration of the term of lease becomes a deforciant (that is, illegal detainer under section 1, Rule 72) without necessity of any demand or notice to quit, because according to the majority, "upon the expiration of the term of the lease, the landlord may go into the property and occupy it, and if the lessee refuses to vacate the premises, an action for unlawful detainer may immediately be brought against him even before the expiration of fifteen or five days provided in Rule 72, section 2," is not correct. Because the act of the landlord of going into the property and occupying it, knowing as he should that he cannot occupy it if the tenant is not willing and ready to vacate the premises, is a factual notice or demand to quit, and therefore the landlord may file afterwards an action of unlawful detainer if the tenant refuses or fails to vacate the premises. Of course, if the tenant is ready to quit and vacate the premises, no cause of action of unlawful detainer would accrue, and no question about the necessity of notice to quit would arise. But if there were no notice to quit at all, the landlord can not institute an action of unlawful detainer because he can not foretell whether or not the tenant will vacate if required to do so. In the case of *Garcia Mayoralgo vs. Jason*, (46, Phil. 868), this Court held that, although the period of lease fixed by the court had expired, the landlord had no right of action to oust the lessee from the premises because he had not previously made a demand to quit. This Court said:

"The question of the term of the lease having been judicially raised between the parties since March, 1919, which question continued unsolved when the letters A and B were written, the way was open for a tacit renewal upon the failure to demand delivery of the property on July 1, 1919, the date when according to the defendant himself the original contract expired. * * * In view of the circumstances of the case, the letters A and B have no legal effect as a demand, because their contents were based on a term of the lease then in question between the parties in court, which letters by reason of the defendant continuing to occupy the property and the plaintiff not making any further demand, left the Juridical relation then existing between them in statu quo."

We agree with the majority that it is a rule of pleading, or rather principle, that a complaint should not allege by way of anticipation a defense which defendant must allege in his answer. It is not necessary to cite the case of *Canfield vs. Tobias* (21 Cal. 349) to support it. But we do not agree to the conclusion that notice to quit need not be alleged in a complaint of unlawful detainer, but in the answer as a defense. Notice to quit is an essential ingredient of a lessor's cause of action and not a defense of the lessee. Although tacit renewal is an implied new contract of lease, as this is legally presumed to arise from the continuity of the tenant's possession, the burden of proof to destroy that legal presumption of the existence of a new contract and, consequently, the legality of the tenant's possession, rests upon the landlord, if he claims the possession of the lessee to be illegal, and files an action of unlawful detainer. The mere allegation in the complaint that the lessee continues in possession of the property leased after the expiration of the term of the contract of lease, gives rise to the legal presumption that there has been a tacit renewal and that therefore the tenant's possession is not illegal, unless the plaintiff further alleges that the lessee had been notified in time to quit and has failed to do so. The best argument in support of this is the fact that the minority says that notice to quit in the present case, though not alleged in the

complaint, may be proved by the plaintiff during the trial in the municipal court, which clearly shows that such notice is not a matter of defense.

The petitioner contends, and the Court upholds his contention, that it is not necessary to allege the above-mentioned jurisdictions facts, not even the facts constituting the grounds of his action in accordance with the provision of section 3 of Rule 4, a copy of section 52 of Act No. 190, which provides that a complaint in the justice of the peace shall state the grounds of action and the relief sought, because petitioner's allegations in his complaint are copied verbatim from Form 1 of the Appendix to the Rules of Court. And petitioner's attorney, Ramon Diokno, who is one of the leading attorneys in these islands, refused to amend the complaint notwithstanding the objection of the respondent-defendants to the admission of the evidence of notice to quit, which was sustained by the municipal court, because, as stated by the representative of the same attorney in his oral argument before this Court, petitioner wants to test the sufficiency of Form 1 in this case. Said Form reads:

"Plaintiff alleges that defendant has unlawfully turned him out of possession (or unlawfully withholds from him the possession, as the case may be) of certain lands and building (here describe the premises), situated in the municipality of _____.

"Wherefore, he prays that he be restored to the possession of said premises, with damages and costs."

This contention is wholly untenable. The forms found in the Appendix of the Rules of Court may only be used "or serve as mere illustrations" as expressly stated therein, to guide the pleader in his allegation of facts and the order in which they should be set out, which facts naturally vary in each particular case. Form is defined by Bouvier in his Law Dictionary as "the model of an instrument or legal proceeding, containing the substance and the principal terms, to be used in accordance with the laws." It is therefore, not to be literally copied, but to be used in accordance with the laws. In an action of forcible entry, plaintiff must allege in the complaint, as required by section 3, Rule 4, of the Rules of Courts, the grounds of the action, that is, the facts constituting the turning of the plaintiff out of possession—whether the defendant has deprived plaintiff of possession by force, by intimidation, by threat, by strategy or by stealth in accordance with section 1, Rule 72. And in an action of unlawful detainer, the particular facts constituting the unlawful detention of the possession by defendant, that is, whether the defendant withholding the possession is a tenant who has failed to pay the rents agreed upon or to comply with the terms of the lease, or continues in possession of the premises after the contract of lease has expired, notwithstanding demand made by the landlord to vacate the premises, or whether he is a vendor who withholds the possession of the property sold to vendee after demand for possession has been made by the latter, and so on, as provided in the same section 1, Rule 72.

It is obvious that said forms have not been appended to the Rules of Court to be copied verbatim, irrespective of the varied and different facts of each particular case. To hold otherwise would be to sustain the absurdity that a defendant, for example, may copy literally Form 3 found in the same Appendix, alleging that "the complaint fails to state acclaim against defendant upon which relief can be granted," and prove under such allegation whatever defense he may have. And in a counterclaim for interpleader, whatever defendant's counterclaim may be, he may copy Form 5 alleging that "defendant received the sum of ten thousand pesos as a deposit from E. F." and prove his true counterclaim; and whatever may be the ground of his motion to dismiss or for intervention, a person may copy literally Forms 8 and 9. Because said Forms 3, 5, 8 and 9, as Form 1, do not require to be supplemented by additional facts, and the majority says in support of its conclusion that a literal copy of Form 1 is sufficient. "In this connection it must be observed that when a form provided in the Rules requires to be supplemented by additional facts, the form itself says so by appropriate words enclosed in parenthesis * * * But Form No. 1, for complaint in forcible entry or illegal detainer cases, requires no additional statement of facts, except the description of the premises and the name of the municipality where the property is located."

The cases of *Armour Packing Co. vs. Howe*, (75 P., 1064, 68 Kan. 663); *Locke vs. Skow* (91 N. W. 572, 3 Neb., [Unof.] 299; *Greenameyer vs. Coate*, (72 P. 377, 12 Okl. 452); *Blachford vs. Frenzer*, (44 Neb. 829, 62 N. W., 1101) and *Sclegal vs. Link*, (105 P., 652; 25 OKl. 263), cited in the decision of the majority, in which it was held that a complaint in forcible entry and detainer is sufficient if substantially in the language of the statute, are against the theory of the majority and support our contention. Because the complaint in this case is not drawn in substantial compliance with the statute, which is section 3, Rule 4, of the Rules of Court; it is a copy of Form 1, and this form is not a statute. And the decisions by the App. Court of Missouri in the other two cases of *Cabane vs. Spalding*, (14 Mo. App., 312), and *Bradford vs. Tilly*, (65 Mo. App. 181), in which it was held that a complaint in unlawful detainer before a justice court is sufficient if substantially in the form given in Revised Statute, does not necessarily support the majority's decision, for there is no way of verifying whether or not the form prescribed therein was sufficient in itself, and it must be presumed that it was. While Form 1 found in the Appendix to our Rules of Court is insufficient if copied verbatim.

In the case of *Townly vs. Rutan* (21 N. J. L. 674; aff. 20 N. I. L. 604 [cited in Vol. 26, p. 846 of *Corpus Juris*], the Supreme court of New Jersey held that complaint will be sufficient which follows a precedent furnished by a state form book, notwithstanding it may appear defective if treated as a technical pleading, where it has been adopted in practice and has received the sanction of the courts." But Form 1 under consideration is a transcription "verbatim" of the form contained in section 81 of Act No. 190, and a literal copy of this form has never been adopted in practice as sufficient by and never received the sanction of this Court. This Supreme Court, for about forty years, since the date the former code of Civil Procedure or Act No. 190 came into effect until it was superseded by the present Rules of court on July 1, 1940, had never adopted or considered sufficient a literal copy of the said form in a complaint of forcible entry or unlawful detainer. On the contrary, as shown in the cases of *Gumiran vs. Gumiran*, *Melliza vs. Towle* and *Mueller*, *Lucido vs. Vita*, and the concurring opinion of Mr. Justice Street in *Gonzalez vs. Salas*, (supra), this Court has consistently held that it is necessary to allege in the complaint the special jurisdictional facts that give prima facie jurisdiction to the justice of the peace or municipal court. And therefore a complaint that merely copies Form 1 is insufficient, because it would not allege the special jurisdictional facts that give jurisdiction to the justice of the peace or municipal court.

This well-established rule, recognized and applied in those decisions in construing the law or section 52, in connection with section 80, of Act No. 190, relating to a complaint in the court of a justice of the peace, and the manner of using the form in a complaint of forcible entry and illegal detainer prescribed in section 81 of said Act, is still in force and applicable to the present case. Because section 1, Rule 7 and section 3, Rule 4, of the Rules of court, are copied from said section 52 and 80 of Act No. 190, and Form 1 is a literal transcription of that found in section 81 of Act No. 190. And this Court has never reversed or nullified up to this time the ruling in the above-mentioned cases. On the contrary, it reaffirmed the said rule and ruling of this Court in the case of *Lizo vs. Garandang*, decided in August 1942 under the Rules, in which the following was held:

"Forcible entry and detainer; what determines jurisdiction of the justice of the peace court.—It is well established that what determines the jurisdiction of the justice of the peace court in a forcible entry and detainer case is the nature of the action pleaded in the complaint. If the facts therein alleged constitute forcible entry and detainer, the justice of the peace court may validly try and decide the case, regardless of whether the facts pleaded are or are not proved at trial. If, as in the instant case, the cause of action set forth in the complaint is one of forcible entry and detainer, although the facts proved at the trial do not support the cause of action thus alleged but one of reivindication, the court has jurisdiction to dismiss the action on the merits for lack of evidence. The dismissal, therefore, of the action ordered by the justice of the peace court in this case upon failure of proof, was right and proper, but its further pronouncement that it had no jurisdiction over the question of ownership, arising from the facts proved was immaterial." (Vol. 2, No. 3, Off. Gaz., March 1943).

And in the case of *Fabie vs. Gutierrez David*, (G.R. No. L-123, p. 436, ante) recently promulgated on December 12, 1945, this Court in a unanimous decision declared:

"We have repeatedly held that in determining whether an action of this kind (unlawful detainer) is within the original jurisdiction of the municipal court or of the court of First instance, the averments of the complaint and the character of the relief sought are primarily to be consulted;"

The decisions above cited and quoted belie the averment in the decision of the majority in this case that "no case—Filipino or American, has been cited to us holding the view that such form (No. 1) or a similar one is not sufficient in action for forcible entry and unlawful detainer" and that "this form has been a part of our statute for more than forty years, and has been used extensively in the province, as is the observation of members of this Court who had been trial judges in the provinces for years, and its sufficiency has never been questioned until now. * * * Besides, just because a verbatim copy of the form has been used extensively in the provinces, as was the observation of some members of this Court, it does not follow that the form is sufficient and that its sufficiency has never been questioned. And even if some members who sign the majority decision badges trial judges, observed or acted upon such a complaint as if it were sufficient without objection of the parties, such use or action, contrary to the above-quoted uniform ruling of this Supreme Court, can not validate the form or make a copy thereof sufficient as above stated. A defective form may be considered sufficient only if it has been adopted in practice and has received the sanction of the courts of last resort.

The two decisions of this Court cited by the majority in the present case as having adopted and approved as sufficient a complaint which copies literally Form 1, does not support such conclusion. The case of *Roque vs. Logan* (40 Off. Gaz., 10th Supp., p. 56) in which it was that this Court may award damages: (which as in the case of rents are necessarily implied in an action of forcible entry and detainer) though not alleged in the body but in the prayer, has no bearing on the question involved in this case. And the statement that in the case of *Aguilar vs. Cabrera*, (G. R. No. 49129), for illegal detainer, wherein "the complaint was made to conform to Form 1 of the Rules, this Court issued a writ of mandamus compelling the municipal court to try and decide the case thus impliedly upholding the sufficiency of the form," is obviously incorrect. The complaint in that case was not made to conform to Form 1, nor was it a mere copy thereof; on the contrary, it alleged all the facts constituting an action of unlawful detainer, as is clearly shown in the following portion of the decision of this court in said case:

Now, an examination of the original as well as of the amended complaint filed by the petitioner with the respondent judge shows that it alleged, in substance, that the defendant has since October 15, 1943, occupied the premises in question as a lessee of the plaintiff under a written contract of lease wherein the defendant obligated himself to vacate said premises 'promptly and peacefully' after the lapse of ninety days from the date of said contract, and that notwithstanding the lapse of said period the defendant has refused to vacate said premises, and the prayer in both the original and the amended complaint is for the ejectment of said defendant from the premises and for damages, aside from the reimbursement of P174.52 advanced by the plaintiff as taxes. The plaintiff does not seek that he be declared the owner of the property in question; he has no need to do so because he holds a Torrens title thereto, therefore, if we are to judge by the allegations and the prayer of the complaint to determine the nature of the action, we cannot but definitely and positively conclude that it is one of unlawful detainer. And as we have repeatedly decided, we must judge by the allegations and prayer of the complaint and not by the allegations of the answer. (*Aguilar vs. Cabrera* [G. R. No. 49129] promulgated June 30, 1944)

It is not correct to say that "There is no fairness in holding the form to be insufficient after all the litigants were told by our Rules to follow it;" that "a form provided by law is a part of the law and, as such, it must be respected regardless of what we might desire as to how it; should be;" that "after all, our duty is to construe the law and not our will, for in administering the law we have no will but the will of the law;" and that "in this instant case, the

form provided by the rules is not a figment of the mind but a practical expression of a fundamental policy." For, as we have already stated, Form 1 under consideration is a verbatim copy of that contained in section 81 of Act No. 190, and this Court, in construing section 80 in connection with section 52 and section 81 of said Act 190, has always required the allegation of jurisdictional facts showing the justice of the peace's jurisdiction in a complaint of forcible entry and Illegal detainer, and consequently held, a contrario sensu, that a mere literal copy of said form is not sufficient. The litigants were not, therefore, told to follow and copy literally Form 1, which is but a copy of that found in said section 81, but to use it in conformity with the construction placed by this Court on the latter and the law on the subject. It is true that a statutory form is a part of the law, but if that law has already been construed by the court in the sense that the form should not be copied literally but must be used only as a model for the allegation of the jurisdictional facts, that is, facts constituting the action of forcible entry or illegal detainer, that construction becomes a part of the form and the law.

It is true that in an action of forcible entry, the allegation that "defendant turned plaintiff out of possession," implies force in the taking of possession (but not intimidation, strategy or stealth); and that in an action of unlawful detainer the allegation of the plaintiff "that defendant has unlawfully withheld possession from him," implies that the defendant's possession, legal in the beginning has become illegal (although it does imply whether defendant is a tenant, a usufructuary, or a vendor, etc.). But such implications do not and can not make the allegations in the complaint sufficient to constitute an action of forcible entry or unlawful detainer. To make it sufficient, it is absolutely necessary to add or set forth therein the date of the illegal dispossession or demand to quit, thus showing that from the time the plaintiff was turned out of possession, or the defendant's possession became illegal, up to the filing of the complaint, one year had not yet elapsed. This allegation is not a mere detail as the majority says, but a jurisdictional fact which must be alleged, for it is elemental that there is no presumption of jurisdiction in courts of special or limited jurisdiction, as the municipal or justice of the peace court. A mere allegation that defendant turned plaintiff out of possession by force, etc., or that defendant's possession has "become illegal, does not imply that the plaintiff was deprived of his possession, or that the defendant's possession has become illegal, less than a year before the filing of the complaint. If at the time of the filing of the complaint more than one year had already elapsed since defendant had turned plaintiff out of possession or defendant's possession had become illegal, the action will be, not one of forcible entry or illegal detainer, but an acción publiciana or for recovery of possession, and the justice of the peace or municipal court will have no jurisdiction.

It is further stated by the majority in support of its theory, that "the principle underlying the brevity and simplicity of this form of pleading rests upon considerations of public policy. Cases of forcible entry and detainer are summary in nature for they involve perturbation of social order which must be restored as promptly as possible, and accordingly technicalities of procedure which may cause unnecessary delays should carefully be avoided. * *

* If, in a singular case, the defendant may not fairly prepare his answer or defense because of the form of pleading, he may ask for more particulars by discovery through deposition (Rule 18 in connection with Rule 4, section 19), or he may very well wait for the trial and listen to plaintiff's testimony on details and then ask for a short postponement to prepare his defense, a petition which would not be denied if duly justified."

The brevity and simplicity of the form of pleading and procedure is an innovation introduced in pleading and procedure in the Court of First instance," and not in the justice of the peace courts. There is no innovation introduced by the Rules of Court in pleading and procedure in justice of the peace or municipal courts, except the adoption of the motion to dismiss which may be based on more grounds than those for demurrer to a complaint under the old law, and the verbal claim of an amount not exceeding twenty pesos (section 7 and 17, Rule 4). In all other respects the form of pleading and procedure in the justice of the peace court under the Rules of Court are the same as those under Act No. 190, and are already too simple and abbreviated to be susceptible to further abbreviation and-simplification. The allegation that on a certain date defendant took possession of plaintiff's

property or turned the latter out of possession by force, intimidation, etc., or that defendant's right to hold possession of the property has terminated but he continue in possession thereof notwithstanding a demand to quit made on a certain date, is almost as brief and simple as a verbatim copy of Form 1. The opinion of Professor Sutherland and Rules 16, 20, 21 and 23 of the Rules of Court cited by the majority in support of simplicity of pleading as the ideal of modern procedure, refer to procedure in Courts of First Instance, as said Rules are not applicable in inferior courts according to section 19 of Rule 4.

Besides, it is a well-established rule recognized and adopted in several hundreds of cases cited in *Corpus Juris* (volume 35, page 62), that the "test of the sufficiency of a complaint in a justice of the peace court, is whether the statement contains enough to inform the defendant of the nature of the plaintiff's claim and so explicit that a judgment thereon will bar another action for the same cause." It is obvious that a complaint which literally copies Form 1 does not inform the defendant of the nature of the plaintiff's cause of action, since it does not state the facts constituting the ground of action, that is, it does not allege whether the unlawful detainer arises out of a contract of lease, sale, or any other contract as provided in section 1, Rule 72. And a judgment thereon will not bar another action for the same cause, because as the testimony of witnesses is not taken down in writing, according to section 15, Rule 4, judgments of inferior courts "need not contain findings of fact or conclusions of law," there would be no way of properly or legally proving prior judgment as defense or ground for the motion to dismiss, which according to section 1, Rule 8, may be set up by the defendant.

The requirement that a complaint of unlawful detainer must set forth the facts of each particular case, and not a mere conclusion that defendant withholds unlawfully the possession of a real property from plaintiff, is not a mere "technicality or detail of procedure which may cause unnecessary delays." Such requirement is an essential element of pleading (not of procedure) necessary to avoid precisely delays in the trial and decision of the case. If, as stated by the majority, in case "defendant may not fairly prepare his answer or defense because of the form of the complaint, he may ask for more particulars through deposition or he may very well wait for the trial and listen to plaintiff's testimony or details and then ask for a short postponement to prepare his defense," the trial and disposition of the case would necessarily be delayed and the defendant subjected to unnecessary trouble and expense. Because in order to secure a discovery of facts through deposition before defendant files his answer, defendant must, upon motion, obtain leave of court to take the deposition of the adverse party (section 1, Rule 18). Besides, a request for more particulars of the allegations in a complaint shall be made, according to law, not by discovery by deposition, but by a motion for a bill of particulars provided in Rule 16, and this Rule is not applicable in inferior courts (section 19, Rule 4, Rules of Court).

The majority further says that "even supposing without conceding, that the complaint is deficient in not alleging the notice to quit the deficiency was cured by the evidence. True that this evidence was admitted over the objection of the defendant. But there is nothing wrong in that admission even applying Rule 17, section 4, which is as follows:

"SEC. 4. Amendment to conform to evidence.—When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court may grant a continuance to enable the objecting party to meet such evidence."

"Under this provision (the decision of the majority continues) when evidence is offered on a matter not alleged in the pleading, the court may admit it even against the objection of the adverse party, where the latter fails to satisfy the court that the admission of the evidence would prejudice him in maintaining his defense upon the merits. * * * Of course, the court, before allowing the evidence, as a matter of formality should allow the amendment of the pleading, and the municipal court did not do so in the instant case. Since, however, the municipal court is not one of record, the rule on amendments should not therein be rigidly applied. And, furthermore, where the failure to order the amendment does not appear to have caused surprise or prejudice, it may be allowed as a harmless error."

In the first place, it is erroneous to apply the above-quoted provisions of section 4, Rule 17 of the Rules of Court, because said Rule is applicable, only to procedure in the Court of First Instance and not in inferior courts according to section 19 of Rule 4.

Besides, even assuming for the sake of argument that it can be applied in the municipal or justice of the peace courts, the provisions above quoted do not support and are against the conclusion of the majority, for the following reasons: First. The theory of the learned attorney for the plaintiff petitioner, Ramon Diokno, in the lower courts, reiterated in his petition for mandamus in the present case, is that the complaint is sufficient in itself, being a literal copy of Form 1, without necessity of alleging demand to quit or jurisdictional facts. For that reason, said learned attorney, who well knew that he could have shortened the proceeding by amending his complaint and alleging the demand to quit and the date thereof, refused to do so and applied for a mandamus to compel the municipal court to admit the evidence of demand to quit, on the ground that he had the right to present and the municipal court had the duty to admit that evidence under the complaint as it is, without necessity of amending the said complaint; and the Court of First Instance presided over by Judge Roxas issued the mandamus on the ground that the municipal court was duty bound to admit the said evidence under the complaint. On appeal to the Court of First Instance, when the defendant respondents filed a motion to dismiss, the attorney, for the petitioner opposed the motion on the ground that the complaint is Sufficient in itself, for it is a copy of Form 1 of the Rules of Court. And when the motion to dismiss was sustained and the complaint dismissed, Attorney Diokno filed a motion for reconsideration on the ground that failure to allege in a complaint demand to quit does not affect the jurisdiction of the municipal court, not even the plaintiff's cause of action. Such being the case, under what law or by what process of reasoning could the municipal court allow the said attorney to amend the complaint or consider the latter as amended over and against the will of the pleader himself?

Secondly, according to the provisions of section 4, Rule 17, of the Rules, the Court may allow the pleading to be amended and then admit the evidence, when the presentation of the merits of the action will be subserved thereby and the amendment and subsequent admission of the evidence would not cause prejudice or surprise to the objecting party, for in such case the fact to be proved is already alleged in the pleading. But it is clearly contrary to law to say that "when the evidence is offered on matter not alleged in the pleadings, the court may admit it even against the objection of the adverse party," and add that Hof course the court before allowing the evidence, as a matter of formality should allow the amendment of the pleading, and the municipal court did not do so in the instant case." Because, as we have already said, the municipal court could not allow the attorney to amend the complaint or do what he did not want to do. The present case is different from that in which a party presents evidence of an essential fact not alleged in his pleading and the adverse party does not object to it, that is, where an issue not raised by the pleading is tried by express or implied consent of the parties. In such a case, even though the parties fail to amend their pleading so as to make it conform to the evidence, the result of the judgment will not be affected because of the consent of both parties.

It is a rule cited in Corpus Juris (Vol. 49, p. 497), and supported by about one hundred cases cited therein, among them the case of MacLaren vs. Kramar, that "where the evidence offered has been promptly objected to on the

ground that such evidence does not tend to support the allegations of the pleading, a motion to amend after admission of the evidence so as to conform to proof should not be granted." And in case of *MacLaren vs. Kramar* it was held:

"As said in *Beard vs. Tilgman* (66 Hun, 12; 20 N. Y. Supp. 756); 'The court had not power at the close of the case to conform the affirmative allegations in the answer to the proof, for the reason that the evidence at the time it was offered, to which the allegations in the answer were made to conform, was objected to, and admitted under exceptions. Under these circumstances, the court had no power to conform the pleadings to the proof, because the party whose objection had been overruled had a right to rely upon his exceptions, and the rights which such exceptions gave to him could not be taken away by the devise of conforming the allegations of the pleading to the proof offered. If any amendment to the pleadings was necessary, it should have been made prior to the introduction of the evidence was objected to. * * *,' (MacLaren vs. Kramar, 26 N. C. 244; 50 L. R. A. [N. S.], 714, 738)

The reason for the rule, according to the Supreme Court of Oregon in the case of *Mendenhall vs. Harrisbug Water Co.* (27 Ore. 38), is that "to allow an amendment under such circumstances would have a tendency to invert the orderly mode of trial."

And thirdly, this Court in the case of *Ramirez vs. Orientalist Go. and Fernandez*, (38 Phil. 646-647), referring to the necessity of amending the pleading under the provision of section 109, from which said section 4, Rule 17, was substantially taken, held the following:

"It is true that it is declared in section 109 of the Code of Civil Procedure that immaterial variances between the allegations of pleading and the proof shall be disregarded and the facts shall be found according to the evidence. The same section, however, recognizes the necessity for an amendment of the pleadings, in all cases where the variance is substantial, to bring them into conformity with the facts proved. That section has, in our opinion, by no means abrogated the general and fundamental principle that relief can only be granted upon matters which are put in issue by the pleadings. A judgment must be in conformity with the case made in the pleadings and established by the proof, and relief cannot be granted that is substantially inconsistent with either. A party can no more succeed upon a case proved but not alleged than upon a case alleged but not proved. This rule, of course, operates with the like effect upon both parties, and applies equally to the defendant's cause of action."

The majority also says that "the admissibility of the notice to quit as evidence should have been considered by the respondent court as a closed question in so far as its jurisdiction was concerned, for it was one of the branches of that court who, in an action for mandamus, issued a writ compelling the municipal court to admit the evidence. The jurisdiction of this court to issue the writ was never questioned. The judgment rendered by the court in such action had become final, the appeal taken thereupon having been dismissed by the court. * * * All these circumstances were within the knowledge of the respondent court at the time it acted upon the action to dismiss. * * * We, therefore, believe and so hold that the respondent court having judicial knowledge of the mandamus proceeding was in duty bound to give due regard and full weight to the final and executed judgment therein rendered, and had it done so, it would have found that the supposed deficiency of the complaint pointed out in the motion to dismiss had already been supplied by the evidence admitted by one of its branches; that the curative evidence was already before it as part of the record, elevated on appeal by the municipal court. * * * What is important is that the case be decided upon the merits, and that it shall not be allowed to go off on procedural points."

All of the above-quoted considerations are without foundation for the following reasons: First, because this Court has consistently laid down the rule, in the cases above quoted, that the jurisdiction of the municipal court to try and decide a case is determined by the allegations in the complaint. Secondly, what Judge Roxas decided in

issuing the order of mandamus was not the question of jurisdiction of the municipal court, but of admissibility of the evidence of notice to quit, under the complaint of the plaintiff. The admission thereof did not and could not cure the deficiency of the complaint inasmuch as the defendant objected to such admission as above stated, and because the plaintiff did not and refused to amend it. Mere admission of an evidence does not and can not cure a pleading, for they are different in nature and purpose. An evidence admitted without objection may be said to cure a defective pleading in the sense that the pleader may amend to make it conform to the evidence. After such amendment the defect is cured. Thirdly, it requires no argument to show that the court presided over the Judge Roxas had no power or jurisdiction to compel the municipal court to admit the evidence, and therefore the writ he issued is null and void, and could not be given legal effect by the respondent judge or this court without impliedly approving or validating it. It being null and void for lack of jurisdiction, it matters not whether or not the jurisdiction of Judge Roxas was attacked or his order had become final. Finally, the respondent judge could not take judicial notice of that evidence in deciding the defendant's motion to dismiss, because according to law, a case on appeal from the municipal court must be tried de novo and consequently the evidence presented in the municipal court cannot be taken into consideration, and the question of sufficiency, the pleading and admissibility of the evidence to be presented at the trial may be raised in the Court of First instance and decided by this Court. Even supposing, although there is no showing to that effect, that the evidence of notice to quit was part of the papers sent by the municipal court to the Court of First Instance, that evidence cannot be considered as part of the record according to section 5, Rule 40, and even if it were so considered, it cannot and should not be taken into consideration by the respondent judge in determining the original jurisdiction of the municipal court and appellate jurisdiction of the Court of First instance.

In the case of *Viola vs. Court of First Instance of Camarines Sur* (47 Phil. 852) this Court held:

"It is also contended by the respondent that it is not absolutely necessary that the facts upon which the jurisdiction of a court is based be stated in the motion of protest, but it is enough if they appear in the record. This question has already been decided also by this court in the case above cited, and others subsequent thereto, and to reinforce the decisions rendered therein, we have to add only that 'Where the jurisdiction of a court depends upon the existence of facts, it has no right or power to proceed or act upon a pleading which does not substantially set forth such facts * * *.' (City of Charleston vs. Littlepage, 51 L. H. A. [N.s.], 353.) And it cannot be otherwise, because if jurisdiction is not presumed where a court of general jurisdiction exercises a special legal power and in a manner which is also a special legal one, and if under these circumstances said courts are, with regard to the power exercised, on the same footing as the courts of inferior and limited jurisdiction (15 C. J., 831), it is necessary that in the motion of protest the facts, upon the existence of which depends the exercise of the jurisdiction of the courts of first instance over election contests, be substantially alleged, otherwise these courts cannot determine whether or not they have acquired jurisdiction to try and decide the case."

It is to be borne in mind that neither in his petition, nor in his memorandum filed in this case, does the petitioner contend that if his complaint were defective it was cured by the said evidence. His contention is that his complaint is sufficient in itself, being a copy of Form 1, and for that reason he did not want to amend it and submitted the case to test the sufficiency of that of that form. If the petitioner really wanted to have the case decided on the merits, he could easily have obtained what he wanted by simply amending his complaint. But he desires precisely to have the question of sufficiency of a complaint copied from Form 1 decided. In view thereof, how can the majority rightly conclude that the complaint was cured by the evidence, and properly say that "what is important is that the case be decided upon its merits, and that it should not be allowed to go off on procedural points?"

Before concluding, it may not be amiss to say a few words in connection with the concurring opinion in this case. The arguments or reasons therein set forth may be summed up in the following: (a) First, that the ruling in

Gumiran vs. Gumiran cannot be relied on because it is an obiter dictum, (b) Second, that this Court in prescribing Form I introduced an innovation to simplify pleading and procedure in justice of the peace courts, and therefore the decisions of this Court construing the old law cannot be applied. And (c) Thirdly, that the Court of First Instance of Manila has appellate jurisdiction because the demand to pay or perform required in section 2, Rule 72, on which the respondent Judge based his order dismissing the petitioner's action, is not applicable to the case.

As to the first point (a), it is obvious that the ruling in Gumiran vs. Gumiran, one of the cases we have quoted, to the effect that as the complaint in that case "did not show the special jurisdiction of the justice of the peace the same would have been demurrable had it been filed in the court of a justice of the peace", because the Court of First Instance was the court having jurisdiction, and therefore the latter erred in sustaining the defendant's demurrer to the complaint on the ground that it had no jurisdiction, is not obiter dictum but the ratio decidendi in said case. With respect to the second (b), it is obvious that this Court, in enacting Form 1, has not introduced any innovation to simplify the pleading and procedure in the justice of the peace courts, for said form and section 1, Rule 72 of the Rules of Court are a mere copy of the form found in section 81 of the old Code of Civil Procedure, and of section 80 of said Code; and therefore the former must be construed in accordance with the construction already given to the latter by this Court. And as to third (c), in accordance with the authorities we have quoted, the Court of First Instance has no appellate jurisdiction, not because the complaint does not allege the demand required by section 2, Rule 72, but because it does allege demand to quit made within one year prior to the filing of the complaint. It is an elementary rule of procedure that where a decision of the lower court is correct but based on wrong grounds, the superior or appellate court must uphold or confirm it basing the decision on proper grounds. (*Garcia Valdez vs. Soteraña Tuason*, 40 Phil. 943).

In view of all the foregoing, we are of the opinion that the respondent judge acted in accordance with law in holding that, as the complaint reproduced on appeal does not show or allege jurisdictional facts, that is, that the case falls within the jurisdiction of the Municipal Court, the latter had no original jurisdiction, and therefore the Court of first Instance has no appellate jurisdiction to try the case on the merits.

The petition for mandamus should therefore be denied with costs to the petitioner.

Petition granted, case remanded with instructions.

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