

**PEDRO C. RELATIVO, PLAINTIFF AND APPELLANT, VS. SINFOROSA CASTRO ET AL., DEFENDANTS AND APPELLEES.***CA-No. 482. April 25, 1946*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/36a9629c57a6/>**OZAETA, J.:**

From 1938 to 1941 the plaintiff as a practising attorney rented and occupied two rooms of the Castro Building situated in Naga, Camarines Sur, at a monthly rental of P18. Soon after the war broke out in December, 1941 he evacuated to Bula, Camarines Sur. At that time he was owing the defendants six months' rental amounting to P108, which he claims they had agreed to reduce to P100. On May 1, 1942, the Castro Building, together with a large section of the town of Naga, was destroyed by fire of unknown origin which broke out on the occasion of a tumult resulting from war conditions.

On February 25, 1943 this action was instituted by the plaintiff against the defendants to recover the value of his law books and other office equipment estimated at P1,433, which he alleged were taken together with the Castro Building, and the further sum of P5,000 as consequential damages arising from the loss of his equipment, it being alleged that had it not been burned "he might have earned" that some from his professional transactions.

Plaintiff's action is planted upon the following theory:

In February, 1942, fearing that his law office might be burned —there having two successive fires in Naga —the plaintiff sent one Marciana Parco to the defendant Sinforosa Castro with a truck to get his law books and furniture, offering to pay P50 on account of his indebtedness of P100. The defendant Sinforosa Castro refused to accept their partial payment, demanded the full amount, and told Marciana Parco that the plaintiff could not remove his books and furniture from the building unless he paid all the back rents. By so doing, the defendants, according to the plaintiff, acted arbitrarily took the law into their hands, and that by not permitting him to remove his law books and furniture, which were subsequently burned, they became liable to him as tortfeasors under articles 1902 and 1903 of the Civil Code. The Plaintiff contended in the trial court that there is no law authorizing the defendants as landlords to retain possession of his law books and furniture and that the defendants were possessors in bad faith and as such were liable for the loss even if caused by force majeure, under article 457 of the Civil Code.

The defendants denied that the plaintiff made the offer to pay P50 and likewise denied that they refused to allow the plaintiff to remove his law books and furniture from the building. They alleged that long before the war broke out, when the plaintiff had been in arrears in the payment of his rents, they had urged him to remove his books and furniture from the building so that they could rent the rooms to somebody else, but that the plaintiff begged them to have patience with him and to allow him to remain because he could not find another place where to transfer his law office; but that long before the fire occurred on May 1, 1942, the plaintiff had already taken his law books and other office equipment to Bula, his home town, leaving only one desk, several chairs, one or two beds, two bookcases, and a small table, which were the only things that were burned during the great fire. By way of counterclaim the defendants alleged that they suffered damages in the amount of P500 "by reason of this action which was maliciously filed."

Upon the question of fact the trial court found in favor of the plaintiff, declaring that the defendants had refused to accept partial payment of the rents due and had retained possession of the law books and furniture as security for the payment of the full amount of the rents. But upon the question of law the trial court found in favor of the defendants, holding that although there is no law expressly authorizing them as landlords to retain the possession of their tenant's personalities as security for the payment of the rent, the defendants could not be considered possessors in bad faith because they honestly believed that they had the right to retain them, taking into consideration the custom of landlords to do so with respect to their defaulting tenants; and that since there was no civil nor penal statute expressly prohibiting such retention in the manner adopted by the defendant Sinforosa Castro, and the latter having acted in the sincere and honest belief that she had the right to do so, the most that could be attributed to her was an error in good faith, for which reason she must be considered a possessor in good faith also. Hence the trial court rendered judgment absolving the defendants from the complaint without any pronouncement as to costs.

From that judgment only the plaintiff has appealed. The defendants, however, without having presented a notice of appeal and a record on appeal, have also filed a brief as appellants for the sole purpose of assailing the findings of fact made by the trial court. However, in the concluding part of their brief as appellants they not only ask that the judgment of the trial court be affirmed but also pray that the plaintiff be ordered to pay to them the sum of P108 representing the unpaid rents.

In the view we take of this appeal we deem it unnecessary to review and reverse the findings of fact made by the trial court, for even accepting the facts as found by it we are of the opinion that the plaintiff has no cause of action for reasons more positive and stronger than those stated by the trial court.

1. Article 1922 of the Civil Code pertinently provides as follows:

"Art. 1922. With respect to determinate personal property of the debtor, the following are preferred:

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"7. Credits for one year's rent with respect to the personal property of the lessee on the estate leased and the fruits produced by such estate.

"If the personal property, with respect to which the preference is allowed, has been removed, the creditor may claim it from the person who has the same, within the term of thirty days counted from the time it was so removed."

This codal provision grants a privilege which in Roman law was known as a tacit or legal pledge or mortgage. (12 Manresa, 3d ed., 729.) Chief Justice Arellano, speaking for the court in *Meyers vs. Thein* (15 Phil., 303, 304), referred to it as a "mortgage or legal pledge."

We are not determining now the right of the landlord over the personalities of the tenant with respect to third persons. [1]We are determining that right with respect to the tenant himself. As between the landlord and the tenant, it seems clear from the above-quoted provision of the Civil Code that the former has the *jus retentionis* (*derecho de retention*) over the personal property of the latter on the estate leased to the extent of one year's rent. (Cf. *Hongkong and Shanghai Banking Corp. vs. Rafferty*, 39 Phil., 145.) That is clearly implied both from the nature of the privilege created—a pledge by operation of law—and from the last paragraph of article 1922 above quoted, which gives the creditor the right within thirty days to retrieve the personal property in case it has been removed from the premises.

The attorney's exemption from execution under section 12 (g) of Rule 39 is not involved herein because such

exemption was not and could not be claimed until an attempt was made to levy on the property claimed to be exempted.

Thus we hold that the defendants and appellees acted lawfully in retaining plaintiff and appellant's personalities as security for the payment of the six months' rents due them, and consequently they cannot be considered either as tortfeasors or as possessors in bad faith, as said appellant claims.

2. It was not necessary for the defendants to assume the role and file a brief as appellants for the purpose of assailing the findings of fact of the trial court whose judgment was in their favor. It is not incumbent on appellee, who occupies a purely defensive position, and is seeking no affirmative relief, to make assignments of error. When the trial judge decides a case in favor of a party on certain ground, the appellate court may base its decision upon some other point, ignored or erroneously decided in favor of appellant by the trial court. (*Garcia Valdez vs. Soteraña Tuason*, 40 Phil., 943.) An appellee does not have to file an assignment of errors but it is incumbent upon him to point out in his brief any errors against himself into which the court may be supposed to have fallen. (*Lucero De Guzman*, 45 Phil., 852.)

3. We cannot grant that portion of the relief prayed for by the defendants-appellees consisting of the payment to them of the unpaid rents of P108, for two insurmountable reasons: (1) they did not allege it in the lower court by way of counterclaim and (2) they did not appeal from the judgment of the trial court and therefore are not now in a position to seek any affirmative relief in this court.

The judgment is affirmed, with costs against the plaintiff-appellant.

De Joya, Perfecto, and Bengzon, JJ., concur. Judgment affirmed.

Ozaeta, J.:

I certify that Mr. Justice Hilado, who is now absent, took part in the consideration of this case and voted to affirm the appealed judgment.

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[1] As to that, see *Peña vs. Mitchell* (9 Phil., 587); *Macke and Macke vs. Rubert* (11 Phil., 480) ; *Meyers vs. Thein* (15 Phil., 303) ; *McMicking vs. Padern, Moreno, Jimenez & Co.* (36 Phil., 987).

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