

OLIMPIA K. VDA. DE DIMAYUGA, PETITIONER, VS. GASPARA RAYMUNDO AND MARIANO NABLE, JUDGE OF MUNICIPAL COURT, BRANCH I, MANILA, RESPONDENTS.

No. L-62. February 18, 1946

Ponente: BENGZON, J.

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BENGZON, J.:

A. Facts. —In civil case No. 206 of the Manila Municipal Court, Olimpia K. Vda. de Dimayuga vs. Gaspara Raymundo and Patricio Torres, the complaint, for ejectment, of April 20, 1945, alleged that defendants, occupying plaintiff's house, had failed to pay the monthly rental of P15 from December, 1944. April 28, 1945, the case was heard. But before the heading, Gaspara Raymundo paid plaintiff's counsel the sum of P60 for the months of December to March, 1945, and was, by the latter, assured immunity from the decision to be rendered in the litigation, because plaintiff's real animosity was only against Patricio Torres, who had allegedly entered the premises without her consent. On the same day, judgment was promulgated requiring defendants to get out, and to pay rents from March 1, 1945 at the rate of P15 per month, until the date they completely vacate the premises. As to the previous rents claimed by plaintiff, judgment was withheld, obviously due to the moratorium. No appeal was interposed, the order became final, and on June 7, 1945, execution was issued whereby the other defendant, Patricio Torres, was ousted. Gaspara Raymundo was not turned away, probably by reason of the agreement she had with the attorney on April 28, 1945, and probably because she paid him P45, and obtained a receipt, worded as follows, on June 12, 1945:

"Received the sum of P45 for the months of April, May and June of 1945, from Gaspara Raymundo, for the house of Mrs. Olimpia K. Vda. de Dimayuga.

(Sgd.) "S. O. CORNEJO

"Atty. for Mrs. Dimayuga"

On July 26, 1945, plaintiff asked for alias execution, which was issued as a matter of course; but upon motion by Raymundo's attorney and a hearing, the respondent judge cancelled the writ, explaining:

"Despues de oir a las partes, habiendose establecido que se dicto sentencia en abril 28, 1945, y habiendo la demandante seguido recibiendo rentes que cubren hasta junio, 1945, es claro que se ha establecido un nuevo contrato."

Petitioner Dimayuga thereafter instituted this special civil action to annul the above order of cancellation, contending that, in quashing the execution, the respondent Judge had acted without, or in excess of, his jurisdiction, or with great abuse of discretion.

Raymundo's "urgent petition to vacate order of execution," averred that, in accepting payment of P45 in June, despite the order of execution in her hands, plaintiff Dimayuga virtually renewed the contract of lease and there by rendered ineffective the judgment for dispossession she had previously obtained. Raymundo additionally

alleged that, subsequent to the 45-peso payment, she concluded a new arrangement with plaintiff Dimayuga, whereby she was allowed to retain the premises at the higher rental of P35 a month.

B. Discussion. —The jurisdiction of courts to entertain motions to quash their writs of execution is unquestioned. It has been maintained in numerous cases, because every court has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own process. (23 C. J., 535.)

One of the grounds for quashing an execution is that, before its issuance, the judgment had been paid or otherwise satisfied. (23 C. J., 540.) The motion should be addressed to the court out of which the writ issued, and by the party to the original suit who is liable to be injured thereby. (23 C. J., 541.)

Yet the quashing of an execution rests largely in the court's discretion, that will be exercised in the furtherance of justice. (23 C. J., 545.)

The court's power to quash being clear, the resultant issue is, whether the Municipal Court abused its discretion in the circumstances herein described.

It appears that plaintiff Dimayuga, instead of enforcing the order of execution, which she got on June 7, 1945, by ejecting Raymundo from the premises, received from her about June 12, the sum of P45, which included the rent for the whole month of June. She thereby placed herself in a position of inability to enforce the writ of dispossession, at least, up to the end of June. Hence she acted against the tenor of the judgment to dispossess Raymundo, and must be deemed to have renounced it. She cast away her right as victorious litigant, to resume her role as lessor. True, under the judgment, she was entitled to rents: but rents past due "back rents" (Annex B). Had she collected rents in advance for one year, there would be no doubt she had thereby abandoned her contention that Raymundo, as deforciant, must be turned out. Her conduct would equally be interpreted had she received advance rents for a shorter period, say, for six months or three months. Now, should the rule be different, simply because the tenant chose (or could afford) to pay one month only, or half a month, in advance, as in this case?

Obviously, the application of the principle should not depend on the number of days or months —impossible to fix the exact limits—but upon the nature of the act.

That the prevailing party may, by inaction, delay the execution of his judgment is certainly undeniable. The question whether, in general, by express contract, for consideration, and without the approval of the court, he may validly agree to postpone such execution for a definite period of time, we are not prepared to answer now. But bearing in mind the philosophy of the recent law penalizing speculation on rents (Act No. 689) there is room to doubt the advisability of permitting the judgment creditor, by contract to periodically postpone the carrying out of his judgment, in unlawful detainer cases. A smart landlord bent on hiking the proceeds of his property might get judgment against the hard-pressed occupant; but to avoid monetary loss due to vacancy, he foregoes execution from time to time, and then, when a suitable prospect offers to pay increased monthly payments, suddenly waving the writ, he drives away the unsuspecting tenant, without benefit of new proceedings, hearing, appeal, etc. Court proceedings should not be used as a means to speculate on the chance of getting higher rents.

On the other hand, it is not hard to imagine landlords resorting to detainer judgments, and then purposely withholding the writ to demand clock-work punctuality in the payment of rents —or else. The situation, if tolerated, would mean that the landlord may, through technicality, turn the scales of justice into a sword of Damocles over the tenant's head and convert the courts into a regular collecting agency. As there is no limit to the number of alias executions available to the judgment-creditor, it is easy to imagine how the landlord might employ such writs to collect rents. If the tenant neglects to pay —writ of execution. When he pays—no ouster. Upon new default—alias execution. And so on. A veritable now-you-go —now-you-don't performance, entirely

incompatible with the dignity of the courts. Lastly, conceding the victorious landlords' power to postpone execution, there is here no showing that Dimayuga's action—collecting rents in advance—was just that; for one thing, no such understanding with Raymundo was asserted. From all indications it was rather a resumption (or recognition) of the lessor-lessee ties, which she had attempted to terminate by the suit, but which she had agreed to continue through her counsel on April 28, 1945.

At any rate, supposing, for the sake of argument, that Dimayuga's act was open to two interpretations—either postponement or resumption—surely the respondent judge is not to blame for adopting that which benefited the debtor-tenant. Resumption of the lease was renunciation of the judgment, and the latter amounted to payment there-of, which, as stated, is legal ground to quash executions.

A sounder basis for the lifting of the execution is the parties' 35-peso-a-month covenant. That was expressly alleged by Raymundo in her urgent petition to vacate (Annex D); yet plaintiff Dimayuga failed to deny it in her reply (Annex E). Her petition for reconsideration (Annex G) denying its existence because no 35-peso rent had been paid is of course ineffective—if not an implied admission—for it is settled that no payment is necessary to perfect the consensual contract of lease. Wherefore, as Raymundo agreed to pay, and Dimayuga agreed to receive 35 pesos a month as rent, the judgment to dispossess became obsolete and unenforceable even if, as seems to be the case, Raymundo neglected to pay the 35-peso rent.

This neglect did not operate to give new life to the judgment.

All in all, we are convinced that the significant equities favor the tenant, Raymundo.

C. Judgment. —The petition is denied, with costs. So ordered.

Jaranilla, Feria, De Joya, Pablo, and Briones, JJ., concur.

PERFECTO, J., with whom concur OZAETA and PARAS, JJ., dissenting:

On May 5, 1945, respondent Raymundo was notified of a decision rendered by the Municipal Court of Manila on April 28, 1945, ordering her to vacate the premises in litigation located at 406 San Lazaro, Sta. Cruz, Manila, and to pay the rents from March of same year until she had vacated completely the property.

The decision became final and executory, no appeal having been perfected.

On June 12, 1945, as a result of the issuance of the first writ of execution, respondent Raymundo paid to petitioner's attorney P45 as rents for the months of April, May, and June, 1945, at the rate of P15 a month in accordance with the decision.

Petitioner's complaint alleged that respondent Raymundo failed to pay rents since December, 1944; that the property is very old and may fall any time, dangerous to live in, and needs to be repaired; that the married daughter of petitioner who escaped the Japanese massacre in Lipa, Batangas, will occupy the premises after the repairs.

On July 26, 1945, an alias writ of execution was issued, the first one issued on June 7 not having been executed. On July 28, respondent Raymundo filed a petition praying that the execution "be suspended and defendant given an extension of thirty days from this date within which to make another settlement with the plaintiff," alleging that upon a "verbal settlement" plaintiff "permitted and promised" to let defendant continue occupying the premises upon payment of rents up to June, which defendant did. Raymundo set the petition for consideration on August 2,

and the petition was denied.

On August 6, Raymundo's counsel filed an urgent petition to vacate the writ of execution wherein he alleged a new "agreement or settlement," completely different from the "settlement" alleged in her petition dated July 28. According to the new alleged settlement, respondent Raymundo shall be allowed to continue occupying the premises in question provided "she raises the rent to P35 a month."

Respondent's counsel alleged also that "on the first week of July, 1945," defendant Raymundo offered payment of the rents for said month of July and also for August at the rate of P30 a month in accordance with the new "settlement," but counsel for plaintiff refused acceptance of said offer of payment.

It is further alleged that "inasmuch as plaintiff through counsel accepted on June 12, 1945, from the defendant Gregoria Raymundo payment of the rents for April, May, and June, 1945, after the issuance of the first order of execution, * * * this representation believes that there is an implied renewal of contract by the said plaintiff and defendant regarding the use and occupation of the premises in question."

From the allegations of respondent and respondent's counsel, the following conclusions of fact are inevitable:

(1) That the "first settlement" alleged by Raymundo in her petition of July 28, namely, that plaintiff "permitted and promised" to let her continue occupying the premises upon payment of rents up to June, 1945, must be false, otherwise there is no reason for her counsel's failure to mention it in his petition dated August 6, wherein he himself deduced the conclusion of law of an "implied renewal of contract" from the fact that plaintiff's counsel accepted on June 12 rents for April, May, and June.

(2) That the "second settlement" newly alleged in the petition of August 6, namely, that defendant would be allowed to continue occupying the premises in question, provided she raises the rent to P30 a month, is equally false, because otherwise there is no explanation why respondent Raymundo failed to mention it in her petition of July 28, instead of relying only on the alleged "first settlement" which, as we have said already, appears to be false.

(3) If the second settlement was really agreed upon, it must have been on or before "the first week of July, 1945," when, as respondent's counsel alleged in his petition of August 6, respondent offered payment of the rents for July and August at the rate of P35 a month. The falsehood of said "settlement" on a raise of rents to P35 per month appears conclusive in view of the fact that, in her petition of July 28, respondent prayed for a period "of thirty days from this date within which to make another settlement."

Petitioner's counsel, in his reply dated August 6, among other things, alleged, without meeting any denial, that plaintiff badly needed the place to put it in shape for her daughter to occupy; that because defendant is occupying the premises, plaintiff is renting a place in Espana Street; that there is no place for an amicable settlement; that rent cannot be increased, the defendant being unable to pay the rent of P15 a month; that plaintiff cannot tolerate the defendant's continuing in the premises because "she is maintaining women of ill repute in her place."

On August 16, the respondent Judge set aside the writ of execution upon the assumption that a "new contract" has been consummated between the parties, considering the fact that plaintiff received rents up to June, 1945.

Under the facts in this case, we do not see how this order of respondent Judge can stand any legal test.

A litigation is brought to court with the purpose of ending it finally.

The end is accomplished when the decision rendered in the case becomes final and executory. According to the Rules of Court, a final decision is executory and may be executed within a period of five years. After that, it may be enforced by action.

"Sec. 6. Rule 39. Execution by motion or by independent action. — A judgment may be executed on motion within five years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action."

During the period allowed by the rules, until fully executed, it should be conclusively presumed that the judgment is in full force as a final settlement of the conflicting rights and interest of the litigants. The decision must be recognized and respected by the whole world. Justice has spoken, and everybody is duty bound to bow to it.

We cannot understand how the decision can be totally set at naught because the defeated party had complied, although belatedly, with a small portion of the judgment, that is, because defendant paid in June the rents she should have paid and failed to pay for April, the rents she should have paid and failed to pay for May, and the rent she owed in June.

Respondent's theory that such payment should be presumed as an "implied renewal of contract" is, not only highly unconvincing, but extremely dangerous. It is in direct conflict with truth as manifested in human experience. It will be a good starting point for a delirious and suicidal dive into a precipice at the bottom of which judicial chaos lies. If the presumption is accepted, it will have the effect of destroying public confidence in judicial decisions. It will turn judicial processes into a veritable weaving of Penelope's cloth, without any hope of termination. Decisions will be just a mere mirage, used to snare and entrap the winning litigant, unaware of the fact that his exultation upon his success on the recognition and vindication of his rights by a competent tribunal will not last longer than a dream in a midday drowsiness.

The very fact that respondent Raymundo, in order to avoid the execution of the judgment rendered against her, had resorted to outright falsehoods, one not being enough to suit her purposes, does not make more beautiful nor happier the legal panorama in the middle of which a decision, surrounded with all the guarantees and solemnities of legality, fairness, and finality, is summarily executed with the blood-freezing swiftness of a Japanese sword beheading a defenseless virgin.

Of course, any litigant may renounce the benefits adjudicated to him in a decision, but that fact must be shown in a more unmistakable way than the facts in this case justify.

If we have to follow the same line of reasoning of the respondent Judge, to show how utterly wrong it is, we will arrive at results with which we doubt anyone would agree. Shall a final decision decreeing divorce be set aside because, after it has become final, the spouses continued or resumed to live together? May a contract of marriage be annulled because the spouses decide to separate? May the owner of a registered property, under the Torrens System, convey the same without executing a deed? May the testator annul his will without executing another? May a written contract of sale of a property be revoked by mere word of mouth?

There might be those who may contend that a contract of marriage or a Torrens title, or a will, are more important than a decision rendered by a court of justice with all the formalities and solemnities required by law, but it is doubtful that any one could maintain that a simple contract of sale is more important than a decision rendered by a tribunal.

If respondent Judge's theory is to be followed, it will place the winning party in a terrible dilemma: to lose the benefits of the decision or to act as a heartless Shylock; to expose himself to the danger of any act of leniency or condescension of his construed as a renunciation of his rights or, like Brenus, place his sword in the balance, and to the Roman's consternation, exclaim the implacable: *Vae victis!* The result is to make of all winning litigants, not human beings as they are and as they should be, ready to understand the miserable plight of the defeated party and to grant him concessions, but hungry tigers always ready to fall upon a defenseless lamb.

We vote to grant the petition.

HILADO, J ., with whom concurs MORAN, C. J., dissenting: On April 28, 1945, the Municipal Court of Manila, deciding its civil case No. 206, Olimpia K. Vda. de Dimayuga vs. Gaspara Raymundo et al., rendered the following judgment:

"DECISION"

"Judgment is hereby rendered in favor of the plaintiff and against the defendants to vacate the premises described in the complaint, and to pay the back rents from March 1st, 1945, at the rate of P15, a month until the date they completely vacate the said premises, and the costs of the suit.

"As to previous rents claimed by plaintiff judgment is deferred. So ordered.

"Manila, April 28, 1945.

(SGD.) "Mariano Nable

"Judge, Municipal Court, Manila"

The plaintiff therein was the same petitioner in this case, the defendants being the herein respondents Gaspara Raymundo and one Patricio Torres. Neither defendant appealed from that judgment. In due time it became final and executory, and under date of June 7, 1945, the said court issued the corresponding writ of execution.

Five days thereafter, to wit, on June 12, 1945, counsel for the therein plaintiff, now petitioner, received from the therein defendant Raymundo, now respondent, the sum of P45 "for the months of April, May and June, 1945 * * * for the house of Mrs. Olympia K. Vda. de Dimayuga" (Annex D).

There is no question that this sum was in payment for the rents pertaining to the three months aforesaid.

Under date of July 26, 1945, counsel for the plaintiff in that case filed a petition (Annex F) requesting the Municipal Court of Manila to issue an alias writ of execution, alleging, among other things, that the first writ had not been executed, presumably as to the ouster of the defendant Raymundo and, of course, as to the payment of the proper rents corresponding to the period in which said defendant had continued and might continue to occupy the leased premises beyond the month of June, 1945. The alias writ of execution thus prayed for was issued on the same date, July 26, 1945 (Annex B-1). This second writ of execution recites that provision in the judgment decreeing "that the plaintiff aforementioned have restitution of the premises together with the back rents from March 1, 1945, at the rate of P15, a month up to the time the said premises is completely vacated by said defendant * * *" (italics supplied), and in its dispositive part orders that the plaintiff have said restitution of the premises and that the Sheriff collect the back rents due "as stated above."

On July 28, 1945, the therein defendant Raymundo filed a petition (Annex C) with the said Municipal Court alleging that after the trial of the case the plaintiff and the defendant had a verbal settlement whereby the former permitted the latter to continue occupying the said premises, upon said defendant paying the rents up to June, 1945; that said defendant had paid said rents until June, 1945; and she prayed that the execution of the judgment "be suspended and the defendant be given an extension of thirty days from this date (July 28, 1945) within which to make another settlement with the plaintiff."

Under date of August 6, 1945, the same defendant, this time represented by counsel, filed an urgent petition (Annex D) with the same Court for the quashing of the writ of execution issued on July 26, 1945, wherein, among other grounds, it was stated and contended:

"That inasmuch as plaintiff, through counsel, accepted on June 12, 1945, from the defendant Gaspara Raymundo,

payment of the rents for April, May and June, 1945, after the issuance of the first order of execution, which, as already stated took place on the 7th of the aforesaid month of June, this representation believes, that there is an implied renewal of contract between said plaintiff and defendant regarding the use and occupation of the premises in question, thereby bringing to naught and futility, the effects of said order of execution." (Par. VII.)

To this, counsel for the plaintiff countered by a reply dated August 6, 1945, inter alia, alleging:

"That Gaspara Raymundo only paid the rents in arrears (arrears) as provided for in the decision. The P45, was paid for the three months back rents. No question that she should pay that amount being under obligation as the Hon. Court find (found) it just and equitable for she lived in the house in question that period of three months * * *." (Par. 2, Annex, E.)

The said reply, after mentioning the defendant's petition of July 28, 1945, asking for a suspension of thirty (30) days within which she desired to make another amicable settlement with the plaintiff, and that said petition was on August 2d denied by the Court, and some other allegations not necessary here to recite, avers in its paragraph 6 that there was no place for an amicable settlement because the plaintiff badly needed the premises, the plaintiff, at that time, was in fact renting another place on España Street, Sampaloc, because the premises in question were occupied by the defendant, and that the moment they are vacated by the latter they would be put in condition to be occupied by said plaintiff's daughter who is married. Neither said urgent petition of Raymundo nor the reply thereto of Dimayuga is verified.

On August 16, 1945, Judge Nable of the Municipal Court of Manila entered an order (Annex F) of the following tenor:

"Despues de oir a las partes, habiendose establecido que se dicto sentencia en abril 28, 1945, y habiendo la demandante seguido recibiendo rentas que cubren hasta junio, 1945, es claro que se ha establecido un nuevo contrato.

"No ha lugar a la ejecucion."

The majority hold that under the foregoing facts, particularly the fact that petitioner herein, as plaintiff in that case, received from respondent Raymundo, one of the defendants therein, P45 covering the rents for the months of April, May and June, 1945, said petitioner "placed herself in a position of inability to enforce the writ of dispossession, at least, up to the end of June. Hence, she acted against the tenor of the judgment to dispossess Raymundo, and must be deemed to have renounced it. She cast away her right as victorious litigant, to resume her role as lessor."

We have no quarrel with the holding that by receiving rents for April, May and June petitioner could not ask for the enforcement of the judgment of dispossession up to the end of June. The reason is that she had received rents covering that period. But we cannot agree to the proposition that because she received rents up to the end of June, she thereby lost her right to ask for the execution of the final judgment in her favor after June.

It will be remembered that the judgment of the Municipal Court was that the defendants vacate the premises in question and pay the proper rents at the rate of P15 a month until the date they completely vacate the said premises.

It is, therefore, clear that under the said judgment the winning landlady was entitled to be paid her rents for all the time that the tenant should continue to occupy the leased premises. Indeed, the judgment could not have been otherwise.

The question, therefore, is whether the receipt of the P45 above referred to was in any way incompatible with the

judgment or with its execution after June 1945. We say that it was not. On the contrary, said payment was pursuant to, and in compliance with, the said judgment. In other words, the landlady, by exercising the right to collect or receive the proper rents under the judgment, corresponding to the duration of the tenant's occupation of her property, cannot be deemed to have forfeited her other right to have restitution of the same property, after the period covered by those rents. The judgment gave her two rights, namely, (1) to oust the tenant at any time not covered by any rental payment made by her, and (2) to collect or receive the rents corresponding to the time that the tenant shall have occupied the premises. There is no question that the lease was from month to month, so that under the second paragraph of article 1581 of the Civil Code the lessor, without need of any notice, had the right to terminate the lease at the end of any month.

When the last rent was paid for June, 1945, it gave the tenant, in the absence of any new agreement, express or implied, between the parties, the right to stay in the premises only until the end of June. It is not pretended that such express new agreement has ever been entered into; neither has the implied understanding been made out as we believe having demonstrated. The tenant's petition (Annex C) for an extension of thirty days "within which to make another settlement with the plaintiff" is an incontrovertible proof of the absence of such new agreement. Obviously, the fact that the tenant continued occupying the premises for the first fifteen days of the following month of July and thereafter, does not produce the effect of a renewal of the lease (*tacita reconduccion*), since it is plain that such continuation of her occupation was not with the acquiescence of the owner (article 1566, Civil Code) —it was positively against her will.

In the case *G. R. No. L-180, Evangelista vs. De la Rosa* (p. 115, ante), this Court held that where a motion and the opposition thereto are submitted to the court without verification and the movant submits his motion without offer of evidence even only in the form of affidavits or depositions and the court hears the same without requiring the presentation of oral or documentary evidence, wholly or partly, or the presentation of such affidavits or depositions, the movant is deemed to admit the truth of all the allegations of the opposing party and to rest his motion upon said allegations together with such of his own as are admitted by said opposing party. (See also *Bauermann vs. Casas*, 10 Phil., 386, 390.) In petitioner's reply (Annex E), filed in the Municipal Court against respondent Raymundo's urgent petition of the same date (Annex D), it is alleged, among other things, that there was no place for amicable settlement between the parties after the payment of the P45 for April, May and June, 1945. Raymundo must be deemed to have admitted this allegation under the rule above cited, which would, of course, summarily dismiss the theory of a renewal of the lease after the said month of June.

In the case of *Zapanta vs. De Rotaeché* (21 Phil., 154), the question of novation of a final judgment by a posterior agreement of the parties was presented under the following facts: On October 25, 1904, the "Vda. e Hijos de F. Suarez" obtained a judgment against one Andres Zapanta for the sum of 7,179.48 pesos, Mexican currency, equipment to P6,353.52, Philippine currency. On November 29, 1904, the plaintiffs, and the defendant entered into a contract whereby the judgment creditor agreed to receive partial payments from the judgment debtor in the form of amortizations of P150 at the end of each month, the parties stipulating that the sum owed shall bear interest at the agreed rate of three per centum per annum, etc. It was stipulated that in case of default in such monthly payments, the judgment creditors "shall be at liberty to enter suit against him (judgment debtor)". The latter made default and the judgment creditors "sued out a writ of execution for the purpose of receiving the balance due * * *."

It was contended on the part of the judgment debtor that the provision in the above-quoted agreement of November 29, 1904, that in case of default "said commercial firm shall be at liberty to enter suit against him," had the effect of extinguishing the rights of the judgment creditors in the said judgment of October 25, 1904; in other words, that by virtue of said agreement all the rights and obligations of the parties to said judgment had been

merged in said agreement; that the only remedy in such case available to the judgment creditors was to commence an action against the judgment debtor upon the same agreement; and that by virtue of that agreement, the judgment creditors lost their right to a writ of execution under the judgment. This Court, passing upon that contention, held:

"A final judgment is one of the most solemn obligations incurred by parties known to the law. The Civil Code, in article 1156, provides the method by which all civil obligations may be extinguished. One of the methods recognized by said code for the extinguishment of obligations is that by novation. (Civil Code, arts. 1156, 1203 to 1213.) In order, however, that an obligation shall be extinguished by another obligation (by novation) which substitutes it, the law requires that the novation or extinguishment shall be expressly declared or that the old and new obligations shall be absolutely incompatible. (Civil Code, art. 1204.)

In the present case, the contract referred to does not expressly extinguish the obligations existing in said judgment. Upon the contrary it expressly recognizes the obligations existing between the parties in said judgment and expressly provides a method by which the same shall be extinguished, which method is, as is expressly indicated in said contract, by monthly payments. The contract, instead of containing provisions 'absolutely incompatible' with the obligations of the judgment, expressly ratifies such obligations and contains provisions for satisfying them. The said agreement simply give the plaintiff a method and more time for the satisfaction of said judgment. It did not extinguish the obligations contained in the judgment, until the terms of said contract had been fully complied with. Had the plaintiff continued to comply with the conditions of said contract, he might have successfully invoked its provisions against the issuance of an execution upon the said judgment. The contract and the punctual compliance with its terms only delayed the right of the defendant to an execution upon the judgment. The judgment was not satisfied and the obligations existing thereunder still subsisted until the terms of the agreement had been fully complied with. The plaintiff was bound to perform the conditions mentioned in said contract punctually and fully, in default of which the defendant was remitted to the original rights under his judgment.

"The contract was not a new and independent obligation expressly extinguishing the judgment; neither were its terms incompatible with the obligations of the judgment. It was simply another method of satisfying the judgment. The judgment was not extinguished. Its enforcement by the methods provided for by law was only delayed during a strict compliance with the terms of the contract. (Ives vs. Phelps, 16 Minn., 407; Brown vs. Feeter, 7 Wendell [N. Y.], 301; Plunkett vs. Block, 117 Ind., Terrett vs. Brooklyn Improvement Co., 87 N. Y., 92; Maute vs. Gross, 56 Pa. St., 250; 94 Am. Dec, 62.)" (Zapanta vs. De Rotaeché, 21 Phil., 159-160; italics supplied.)

In the case at bar, when petitioner, as plaintiff in the Municipal Court, received the P45 on June 12, 1945, to cover the rents for April, May and June, of that year, she did not relinquish all her rights under her judgment but merely received the rents tendered as she had a right to receive under said judgment. As to the month of April and May, there should be no question that she was absolutely entitled to it on or before June 12, 1945. As to the P15 corresponding to June, at best, she can only be deemed to have given her tenant some days of grace within which to vacate the premises, the grace to terminate by the end of that month, and it was but just and legal that she should be paid the rent for said month in its entirety. We are clearly of opinion that these acts of the judgment creditor were not at all incompatible with the obligations of her judgment. Article 1204 of the Civil Code, even in a case where a new agreement is entered into between the parties provides that in order that the later obligation may extinguish the previous one, it shall be necessary that it be expressly so declared in the later obligation, or that the old and the new obligations be incompatible in every respect. But the case before us is even stronger because there is no later obligation or agreement, express or implied, between the parties. As regards the days of grace above spoken of, it would indeed be sheer injustice to penalize the owner for her generosity toward her

tenant by binding her to what would be tantamount to a new contract of lease with her tenant to which she has not given her consent but has, on the contrary, expressed her determined opposition.

The judgment in favor of Dimayuga was for restitution of the premises and the payment of rentals up to the time that the tenants completely vacate them. This judgment was enforceable at any time within five years, during which time the judgment creditor would have been entitled to ask for execution (Rule 39, section 6). And when such execution should issue she would, of course, be entitled to restitution of the premises, plus payment of all unpaid rents up to the time of complete vacation thereof by the tenants.

On June 12, 1945, petitioner had the undoubted right to a writ of execution of her judgment for restitution and payment of all unpaid rents up to the time of complete vacation by respondent Raymundo. Instead of exercising that right entirely, she decided to treat her tenant with further benignity by delaying the execution as to restitution up to the end of that month, receiving only the rents corresponding to the same and the two months immediately preceding. By analogy of reasoning, what has been repeatedly held by this Court in cases of mere delay on the part of a creditor in demanding payment from the principal debtor for the effects of article 1851 of the Civil Code, the following pronouncement of Chief Justice Arellano in *Banco Espanol Filipino vs. Donaldson Sim & Co.* (5 Jur. Fil., 438, 443), referring to the delay of a creditor in demanding payment from the principal debtor may be applied here, and with greater force, because there is here no other party, like the surety there, to be considered:

"El diferir el ejercicio de la action no implica alteration en la eficacia del contrato, ni modo alguno de responsabilidad por parte del acreedor. Es puramente, sin demostracion o prueba en contrario, espera, cortesia, lenidad, pasividad, inaction. * * *" (Italics supplied.)

We, therefore, conclude dissenting from the majority opinion and opining that judgment should be rendered conformably to the prayer of the petition.

Petition denied.

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