

ALEJANDRO R. SANTOS, PLAINTIFF AND APPELLEE, VS. CATALINA DE ALVAREZ, CARLOS TANSECO, AND MANUEL ALVAREZ, DEFENDANTS AND APPELLANTS.

G.R. No. L-332. June 18, 1947

Ponente: MORAN, C.J.

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MORAN, C.J.:

Alejandro R. Santos, plaintiff-appellee herein, filed a suit in ejectment for the premises designated as No. 22, Altura Street, Sta. Mesa, Manila, occupied since September 1942 by defendants-appellants, Catalina de Alvarez, Carlos Tanseco, and Manuel Alvarez. Santos obtained judgment in his favor in the municipal court of Manila, which was affirmed on appeal to the Court of First Instance. This appeal is now from the judgment of the Court of First Instance wherein defendants Alvarez et al. are ordered to vacate the premises, to pay the plaintiff back rent from April 1, 1945, at the rate of P35 a month up to the time the premises are vacated, and to pay the costs of the suit.

Section 2 of Republic Act No. 66, amending Commonwealth Act No. 689, provides:

"In a suit for ejectment or for the collection of rents due and payable by virtue of a contract of lease of buildings destined solely for dwelling, not being a room or rooms of an hotel, and lots, the fact that the rents are unjust and unreasonable shall constitute a valid defense. Except as provided in section twelve of this Act, no lessee or occupant shall be ejected in cases other than for willful and deliberate nonpayment of rents or when the lessor has to occupy the building leased." (*Italics ours.*)

Under this provision, a lessee cannot be ejected even for non-payment of rents, where such non-payment is not willful and deliberate and the lessor does not need the property for himself and the lessee has never subleased it without authority. In other words, a lessee who is unable to pay on time the agreed rents because of poverty or of any other circumstance beyond his control cannot, under the present law, be ejected from the leased property, if the other two circumstances are not present. The purpose of the law is evidently to relieve the present situation arising from the scarcity of housing facilities by protecting particularly the thousands of impoverished people who in the war of liberation lost their houses together with almost all their belongings and found shelter in houses owned by others. By the very nature of its purpose, this measure of social justice, which is temporary in character (four years), is applicable to all lessees or occupants at the time the law was passed, regardless of the dates of their contracts. Manifestly the law seeks to relieve an existing condition affecting the life and happiness of the people, a condition that is not less important because of its age. Indeed, a poor lessee does not cease to be poor because his contract bears an earlier date than that of the law. It is expressly ordained by said law that "no lessee or occupant shall be ejected in cases other than for willful and deliberate non-payment of rents," a negative and all-inclusive expression which is mandatory and embraces within its protection all lessees and occupants without distinction at the time the law was passed. The only exceptions to the rule as above indicated are (1) when the lessee or occupant subleased the property without the consent of the lessor; (2) when there has been willful and deliberate non-payment of rents; or (3) when the lessor has to occupy the building leased. Under the facts of the instant case,

the first and second exceptions cannot be invoked. As regards the third, the lessor, according to his testimony reiterated in his brief, wishes to secure the premises for his two sons or near relatives. But the exception applies only when the lessor "has to occupy the building leased." It does not apply when the lessor needs the building for others. In other words, the need contemplated by law is only the lessor's need. His sons or near relatives are not the lessors. The sons should live with their father if they are minors, and if they are of age they are no longer dependents of their father. The near relatives have no standing in the lease, hence their need cannot be considered.

Moreover, there is the defendant's allegation that plaintiff has other properties which he has been leasing to others rather than to his two sons and near relatives, which allegation is not denied and is indirectly admitted in appellee's brief.

In view of the foregoing, the judgment of the lower court is affirmed in so far as it fixes the monthly rent for the premises in question at P35, and reversed in so far as it orders defendants-appellants to vacate said premises and to pay the costs. Plaintiff-appellee will pay the costs of this suit.

Pablo, Bengzon, Hontiveros, and Tuason, JJ., concur.

CONCURRING

FERIA, J.:

I concur in the opinion of the majority.

I should have signed the said opinion, without writing this separate concurring one, were it not for the dissenting opinion or opinions based on the conclusion that Commonwealth Act No. 689, as amended by Republic Act No. 66, is not applicable to the present case, for it can not be given a retroactive effect, and the laws applicable are those in force at the time the complaint in this case was filed with the justice of the peace before said Act went into effect, that is, the pertinent provisions of the Civil Code, which conclusion is wrong for the following reasons:

Section 2 of said Act No. 689 as amended provides:

"In a suit for ejectment or for the collection of rents due and payable by virtue of a contract of lease of buildings destined solely for dwelling, not being a room or rooms of an hotel, and lots, the fact that the rents are unjust and unreasonable shall constitute a valid defense. Except as provided in section twelve of this Act, no lessee or occupant shall be ejected in cases other than for willful and deliberate nonpayment of rents or when the lessor has to occupy the building leased."

From the provisions above quoted, and taking into consideration the plain purpose of the law, it appears that the latter is clearly intended to temporarily supersede the provisions of the Civil Code on the matter, and to make it applicable to all pending and future litigations. For it provides that, "except as provided in section 12 of this Act, no lessee or occupant shall be ejected in cases other than for willful and deliberate nonpayment of rents or when the lessor has to occupy the building leased;" and a lessee or occupant can only be judicially ejected after the judgment in an action of ejectment against him has become final. Had the intention of the Legislature been otherwise, it would have provided that "no action for ejectment shall be instituted against a lessee or occupant except, etc." And, besides, were it to apply prospectively or only to future actions instituted after said Act became effective, the apparent purpose of the law would not be fully accomplished, for it is of common or judicial notice that there were many cases of ejectment then pending originally and on appeal in the courts at the time the law was enacted, and the scarcity of housing facilities was more acute before than after the promulgation of said Act.

From the provision of section 14 of said Act No. 689 as amended to the effect that "this Act shall be enforced for a period of four years after its approval," it does not follow that said Act because of said provision can not have a retrospective effect, for said period of four years is a mere limitation of the prospective effect of the Act as an emergency legislation, but has no bearing on the retrospective effect thereof.

"There is some conflict of opinion as to whether a case should be determined according to the law in effect when the judgment was rendered in the lower court, or according to the law in effect at the time the cause is disposed of by the reviewing court, but both reason and the weight of authority point to the view that the case must be determined in the light of the law as it exists at the time of the decision by the appellate court, where the statute changing the law is intended to be retroactive and apply to pending litigation, or is retroactive in its effect; and this is true though it may result in the reversal of a judgment which was correct at the time it was rendered by the trial court. The general rule is, of course, subject to limitation where rights have been acquired which may not be divested by legislative changes in the law. In other words, while, as a general rule, the province of an appellate court is only to inquire whether a judgment when rendered was erroneous or not, if, subsequently to the judgment, and before the decision of the appellate court, a law intervenes and positively changes the rules which govern, the law must be obeyed, unless it is unconstitutional." (3 American Jurisprudence, pp. 668, 669.)

It is elementary that all courts have inherent power to decide whether or not a law is retrospective or of retroactive effect, because if they hold the affirmative they merely declare what the law is or the intention of the legislature in enacting it. It is, therefore, clearly erroneous the contention in the dissenting opinion that this Court cannot give retroactive effect to Act No. 689 without usurping a legislative function. Of course, the courts should not construe the law as retrospective if such a construction would make it unconstitutional. The only question therefore to be determined in this case, although the dissenting opinion does not discuss it, is whether Act No. 689 is violative of the Constitution.

Our Constitution does not in terms prohibit the enactment of retrospective laws which do not impair the obligations of contract or deprive a person of property without due process of law, that is, do not divest rights of property and vested rights. It is obvious that the plaintiff and appellee in the present case had not acquired any right vested by the judgment appealed from to have the appellant ousted, because the judgment had not yet become final and was pending appeal at the time said act was enacted; and it is also clear that the pertinent provisions of the Civil Code having been temporarily repealed and superseded by said Act, the case must be determined on the law as it stands at the time the judgment of this Court is rendered, there being no saving clause excluding cases pending at the time Act No. 689 from the effects of said Act.

But even assuming that the appellee had a property or vested right to recover the possession of the property leased by him to the appellant at the expiration of the term of the lease, "No rule in constitutional law is better settled than the principle that all property is held subject to the right of the state reasonably to regulate its use under the police power in order to secure the general safety, public welfare, public convenience and general prosperity, and the peace, good order and morals of the community" (11 Am. Jur., section 268). Act No. 689 as amended was enacted under the emergency police power of the state.

The police power to a large extent rests on the maxim "sic utere tuo ut alienum non laedas." Another principle involved in the police power is expressed by the well-known maxim, "salus populi est suprema lex." It has been said that this maxim is the foundation principle of all civil government and that for ages it has been a ruling principle of jurisprudence. "A specific application of the doctrine that the police power is based on public necessity finds its application in statutes which have been passed at different occasions during emergencies to cope with the unusual exigencies arising. The general rule that while emergency does not create power, increase granted power, or remove or diminish the restrictions imposed upon power granted or reserved, emergency may

furnish the occasion for the exercise of power applies with full force and effect to police measures. Thus, a limit in time to tide over a passing trouble may justify a law that could not be upheld as a permanent change. It must be considered, however, that an emergency does not automatically lift all constitutional restraints and that a law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change, even though it was valid when passed." (11 Am. Jur., p. 979.)

Before concluding, it may not be amiss to say that it is purely academic and a superfluity to dissent from an obiter in the majority opinion, as one of the dissenters does, because an obiter is not an opinion of the court but of the writer of the decision. Besides, the dissent is without any foundation of facts, inasmuch as the majority does not state that failure to pay at all but inability to pay in time, the rents because of poverty or any other circumstances beyond the lessee's control, does not constitute a cause of action for ejecting a lessee under Act No. 689, as amended.

PARAS and BRIONES, JJ.:

We concur in the above concurring opinion of Mr. Justice Feria.

DISSENTING

PERFECTO, J.:

Plaintiff testified that defendant Catalina de Alvarez rented his house at 22 Altura street, at the beginning, in 1941. In March, 1942, she left the house and went to live at the National Development Company. In September, 1942, she came to occupy the house again. Plaintiff agreed to accept defendant Catalina de Alvarez as tenant, because her family was composed of only about six persons. The other two defendants were living in another place. Plaintiff needs the house very badly because "I have two sons whose houses were burned during this war. Besides I have near relatives who want to live also downstairs." And defendant "Manuel Alvarez, insulted me and was about to fight me." When plaintiff came back in February, 1945, from their evacuation place "I told them that I needed the ground floor immediately as there was no more need for shelter and that my two sons and near relatives would live in the house, but because they had a few belongings deposited therein, they did not like to vacate the premises. So on April 2, I sent her a formal note that they must leave the house in thirty days." Copy of the note has been presented as Exhibit A. Defendant sent plaintiff Exhibit B-1, in which it is stated: "Mr. Santos: Excuse me for not having removed my things downstairs, because we are still looking for a place where to move to, and as soon as we get a place I will let you know.—Sgd. C. de Alvarez." Defendants are misusing the house. The Bureau of Health ordered plaintiff to repair the floor of the kitchen which has been leaking. "I had it repaired, Your Honor, but after ten days it leaked again and it was worse, because they had been beating clothes when washing same. Aside from that, in the kitchen, in front of the stove, they split firewood." Exhibits C and C-1 are the orders issued by Emilio Ejercito, Sanitary Engineer of Manila for plaintiff to make the repairs. Defendants "have torn down the partitions below" and the decorations in the sala. The lumber they used for making shelter has not been returned. Some are missing.

Mario Santos testified that he is the one who delivered to defendant Catalina de Alvarez, plaintiffs's letter of April 2, 1945. "As my father instructed me, I pasted one of the two copies at the door downstairs. Everybody can see it."

Lim Puan, occupant of the ground floor of the house, testified that he has complained to the plaintiff because the kitchen of the upper floor was leaking. Plaintiff had it repaired but one or two weeks thereafter there was leakage again. "There were broken parts."

Defendant Catalina de Alvarez testified that she has been occupying the premises since August 15, 1941. When she moved to the house her co-defendants Manuel Alvarez and Carlos Tanseco, her son and son-in-law, respectively, went with her. She does not know of any repairs that had been made in the house by plaintiff. "There was nothing to repair there. The floor of the kitchen and the toilet are made of tile and one of the partitions is of wood. Naturally because of water it became decayed and then exposed and then it caused some leakage. What the plaintiff did was to cover it with tar." As to the allegation in the complaint that she had failed to pay the rents from April, 1945, she said: "I was paying the rent but he did not receive it because he wanted to drive us away. When I came from the place of evacuation that was the time he requested us to pay P100 rent for the house." At first she was paying P30 monthly rent. In April she sent P35. "I made repairs in the walls by putting nails."

Manuel Alvarez testified that he has been living with his mother at 22 Altura since 1941 after the great fire in Tondo. "Did you ever pay rents to your mother?" "Certainly." The witness denies any misuse of the house. "In fact we had some repairs made in the house. The floors that were out of order, the electrical wiring, and we improved the furnace of the house kitchen."

Testifying on rebuttal, plaintiff belied defendant Catalina de Alvarez' testimony as to his trying to increase the rent of the house to P100 a month.

This case was initiated almost two years ago with the complaint filed with the municipal court on June 21, 1945. On July 5, 1945, defendants filed their answer. After due trial, on the same day, Judge Nable rendered decision ordering defendants to vacate the premises and to pay rents from April 1945, at the rate of P30 a month, until they had completely vacated the premises.

Defendants appealed on July 13, 1945, filing the answer with the Court of First Instance of Manila on August 11, 1945. On August 21, 1945, plaintiff moved for reassignment of the case to another branch so that it may be "terminated with ease and dispatch." On August 28, the motion was granted. On August 29, defendants moved to reconsider the order granting the reassignment. After due trial, on November 10, 1945, Judge Alfonso Felix, now Justice of the Court of Appeals, rendered decision ordering defendants to vacate the premises and to pay the rents from April, 1945, at the rate of P35 a month, up to the time they actually vacate the premises.

On December 19, 1945, defendants appealed again. After more than six months, the case was set for hearing in the Supreme Court on August 30, 1946. On the same day it was submitted for our decision.

Notwithstanding the fact that this is a simple case of ejectment, we failed to decide it until the Court of Appeals was recreated, when it was transmitted to it for decision. The case was again set for hearing by the Court of Appeals, and counsel for both parties called attention to the fact that the case had already been argued upon and submitted for decision in the Supreme Court and should for that reason be decided by the same in view of the provisions of section 3 of Republic Act No. 52. On January 10, 1947, the Court of Appeals remanded the case to this Court.

After deliberation, a majority of this Court decided to reverse the decision of the Court of First Instance of Manila in so far as it orders defendants to vacate the premises and to pay the costs. Plaintiff-appellee is sentenced to pay the costs.

We dissent from that decision. In our opinion, the lower court's decision, being well founded on law and on the facts proved by the evidence on record, should be affirmed in toto.

The majority's decision is premised on a wrong application of Commonwealth Act No. 689, as amended by Republic Act No. 66. The error consists mainly in giving to said act a retroactive effect not provided in it nor intended by Congress. Commonwealth Act No. 689 came into effect on October 15, 1945. Section 14 thereof

provides: "This Act shall be enforced for a period of two years after its approval."

This provision dispels any doubt as to the time of the enforceability of said act. Aside from the elemental rule of legal hermeneutics that no retroactive effect shall be given to an act, unless so expressly provided therein, the last quoted provision constitutes an express prohibition against giving retroactive effect to the act in question. If section 14 of Commonwealth Act No. 689 should offer any doubt as to the purpose of its authors forbidding any retroactive effect and of limiting its period of enforceability, the period to begin from October 15, 1945, the date of its approval, that purpose is reiterated by section 1 of Republic Act No. 66, when it amended section 14 of Commonwealth Act No. 689 to read as follows: "This Act shall be enforced for a period of four years after its approval."

Neither this Court nor any court in the world may give retroactive effect to Commonwealth Act No. 689, prior to its approval on October 15, 1945, without usurping the legislative function entrusted by the Constitution to Congress, and without unconstitutionally extending backwards the two-year period originally provided or the four-year time mentioned in Republic Act No. 66.

Whether plaintiff is entitled or not to the remedy sought in his complaint, that is a question that must be decided under the laws existing and in effect at the time the complaint was filed on June 21, 1945, about four months before the approval of Commonwealth Act No. 689. The lease contract between the parties being from month to month, under article 1581 of the Civil Code, the one existing and applicable at the time of the filing of the complaint, plaintiff was entitled to terminate the lease at any month, and, according to article 1565 of the Civil Code, without any demand, and this Supreme Court has decided so in a long line of decisions rendered since 1945 and even after October 15, 1945, the date that Commonwealth Act No. 689 began to take effect. (*Estrella and Estrella vs. Sangalang*, 76 Phil., 108; *Domingo Vda. de Buhay vs. Cobarrubias*, 76 Phil., 213; *Roque vs. Cavestani de los Santos*, No. L-218, August 8, 1946; *De Guzman vs. Moreno*, No. L-257, October 2, 1946; *Ramirez vs. Reyes*, 77 Phil., 1030; *Licaucó vs. Reyes Estaniel*, No. L-215, February 28, 1947; *Inquimboy and Pelay vs. Juachon*, No. L-197, March 14, 1947; *Philippine Sugar Estates Development Co. vs. Prudencio*, 76 Phil., 111; article 1581, Civil Code.)

The injustice committed to plaintiff by the retroactive effect given to Commonwealth Act No. 689 is aggravated by the fact that he is made to suffer the effects of a law which was approved only on October 18, 1946, after one year and four months of litigation. Plaintiff is the victim of a second grade retroactive effect not authorized either by law or by the Constitution to be given. The majority apply section 2 of Commonwealth Act No. 689 as amended by section 1 of Republic Act No. 66. The right of plaintiff to eject defendants is denied him because he has not shown that he "has to occupy the building leased." This provision was enacted only on October 18, 1946, when Republic Act No. 66 was approved. Then the majority gives it a retroactive effect as if the provision was enacted at the time Commonwealth Act No. 689 was approved on October 15, 1945. After this first grade retroactive effect, the majority gives it another backward jump, so that the clutches of the provision may strangle plaintiff's complaint filed since June 21, 1945.

In infringing the sphere of legislative functions, the majority may claim that they are inspired by the same generous feeling of helping tenants that induced Congress to enact Commonwealth Act No. 689. About section 2 thereof, as amended by Republic Act No. 66, they say:

"The purpose of the law is evidently to relieve the present situation arising from the scarcity of housing facilities by protecting particularly the thousands of impoverished people who in the war of liberation lost their houses together with almost all their belongings and found shelter in houses owned by others."

We are no less concerned about the lot of tenants. In our long years of practice of the law, we have defended

tenants in many hundreds of cases. As a newspaperman and as a political leader, we have worked long and hard to improve their conditions. We have steadfastly campaigned for the acquisition by the government of big landed estates and large urban tracts of land to give tenants facilities to own small lots and to cease paying rents. We have that idea incorporated in the platforms of the Democrata Party and other political parties in which we had militated. As member of the Constitutional Convention, we helped for the inclusion in the fundamental law the provision giving the legislative department power to "authorize, upon payment of just compensation, the expropriation of lands to be divided into small lots and conveyed at cost to individuals." (Section 4, Article XIII.) We ourselves have been a tenant for many years. But we do not believe that our ideas as to how we can help tenants should be made to prevail as law in contravention of existing laws, or that they give us a green light to the extent of even usurping the legislative functions of Congress, or subverting the traditional moral values of our people.

The spirit of helpfulness among near relatives is one of the oldest and most outstanding moral traits of our people. From North to South, from East to West, no matter to what province we may go, we will find that spirit blooming in almost every home, from the proudest to the humblest, as one of the most beautiful flowers of our race. That spirit is even more pronounced between parents and children. It is common to see grown up children, even those rearing their own families, continuing to enjoy the shelter of a common roof with their parents. If under the same roof there is not enough space, parents are always ready to help their children obtain a convenient one. No one should be, therefore, surprised that plaintiff should seek to oust defendants in order to give shelter to two sons, whose houses were burned during the battle of liberation. There is no doubt in our mind that plaintiff's children are entitled to preference over mere strangers. Agreeing with the proposition that the spirit of Commonwealth Act No. 689 and Republic Act No. 66, is to help the less fortunate at the sacrifice of the more fortunate ones, which it is presumed to be the relative positions between tenants and house owners, in the impossibility of giving help to all the less fortunate, it is necessary to establish a distinction between preferential cases and those which are not. Among two less fortunates claiming opportunity to occupy the same house, there should not be any question that the children of the owner are entitled to preference over strangers.

We are not trying to put in issue the wisdom or unwisdom of the thought that Commonwealth Act No. 689, as amended by Republic Act No. 66, should have a retroactive effect so as to apply to lease contracts entered into and litigated in court before its enactment, but it is definitely unwise for this Supreme Court to legislate, when that power is lodged by the Constitution in Congress. Of course, there should not be any disagreement that we may fill certain gaps in the law, and even correct inconsistencies, but such we can do only on matters which are conclusively within the scope of the law we are interpreting and applying. We cannot do that on a ground not covered by such a law. Our action must be limited within the specific space and time which are comprehended within the provisions of said law. We cannot go further without invading a field belonging to others, the one under the exclusive jurisdiction of the legislative department.

By giving a retroactive effect to Commonwealth Act No. 689, without said effect being authorized by the same act, is tantamount to enacting said law for the period prior to its enactment. By such action this Supreme Court is impinging a ground not belonging to it. Such an encroachment of legislative functions is violative of the Constitution.

The majority's action in this case, after the dissented decisions in *Vera vs. Avelino* (77 Phil., 192), and in *Mabanag vs. Lopez Vito* (p. 1, ante), offers a judicial paradox which is hard to explain. While in the last two cases, the Supreme Court has been made to fail to perform its elemental duty of adjudging two important litigations, in which clear violations of the Constitution were in issue, adopting for the sake of the alleged principle of separation of powers the so-called hands-off policy, which is a euphemistic name for the

psychological feeling produced by a primitive taboo, in this case there is a showing of an amazing boldness, through which this Tribunal assumes a legislative function, by extending and enlarging the two-year and four-year periods, respectively, provided by Commonwealth Act No. 689 and Republic Act No. 66, within which the provisions of the former are limited to take effect, the limitation having been adopted in view of the fact that said laws, enacted to face a situation of emergency, are of temporary nature. To defeat plaintiff's right of action, approved under the applicable laws at the time it was brought to courts, this Tribunal has to assume the double role of Congress and Supreme Court. That it has to assume the powers of two departments, the legislative and judicial, in order to wield the axe under which the right of action of plaintiff is to be executed, such a right of action must be too tough to be dealt with.

The pronouncements in the majority opinion to the effect that Commonwealth Act No. 689 is a measure of social justice, that it is intended to relieve an existing condition affecting the life and happiness of the people, and that a poor lessee does not cease to be poor because his contract is older than the law, have no bearing at all with the fundamental question involved in this Court's exercising of a legislative function belonging to Congress. Not because we may agree with the social ends intended by the authors of the measure, are we justified to broaden its scope, to amend or supplement it, or to change its prospective character by making it retroactive. Our agreeing with the congressional objective is no reason why the Supreme Court should enact legal provisions not enacted by Congress. Such arrogation is violative of the fundamental law.

We are not to end this opinion without recording our dissent with the obiter in the majority opinion, in construing the law in question, to the effect that a lessee who is unable to pay the agreed rents because of poverty or of any other circumstance beyond his control cannot be ejected. Can the owner be compelled, either by legislation or by judicial interpretation, to practice charity? How about the constitutional guarantee protecting property? Does the pronouncement not decide in effect an expropriation of the owner's possession to be gratuitously given to a tenant?

The phrase "willful and deliberate non-payment of rents" in the provision of the law that "no lessee or occupant shall be ejected in cases other than for willful and deliberate nonpayment of rents or when the lessor has to occupy the building leased," if the validity of the provision is to be upheld, should be construed to refer only to cases of involuntary delay in the payment of rents, but never to create a legal exemption from the obligation of paying rents in favor of a class of tenants, no matter how numerous they may be, who, on account of their financial situation, are unable to pay rents, as is erroneously maintained by the majority.

We do not believe that Congress had ever intended to grant to tenants unable to pay rents free houses or lodging at the expense of the owners. We do not believe that Congress had ever purported to expropriate, without any compensation, the private property of house owners in order to give free shelter to economically hard-pressed tenants. The authors of Commonwealth Act No. 689 and Republic Act No. 66 have never had the intention of flagrantly violating the constitutional guarantees that "no person shall be deprived of property without due process of law," that "private property shall not be taken for public use without just compensation," and that no person "shall be denied the equal protection of the laws."

Of course, there is nothing to impede Congress from adopting the policy of providing houses, built or acquired at the expense of public funds, to shelter all the inhabitants who cannot afford to pay rents. Before the last war, our government built, with funds provided by the National Assembly, tenement houses for the poor. Congress may provide funds for the erection of so many tenement houses as may be needed and even provide for their free occupancy by the poor. Such thing has not been provided either in Commonwealth Act No. 689 or in Republic Act No. 66. May this Supreme Court supply the omission by inserting in said acts, through judicial interpretation, the provision that house owners shall not charge or collect any rent from tenants who are unable to pay it?

Such is the effect of the obiter in, the majority opinion to which we are objecting. The theory of the obiter is flagrantly violative of express provisions of the Constitution and will lead to evil results of unsuspected magnitude. The financial inability of tenants to pay rents is not a fact that can easily be proved. With the exception of the small minority whose incomes are large enough to be concealed, it will always be possible for tenants to claim their inability to pay rents, and house owners will have a hard time to challenge the claim. There is no doubt that they will succeed only in a very few cases.

The theory will be a stimulus to the bad faith of unscrupulous tenants. No matter how big, commodious or even sumptuous the house may be, or how high its reasonable rent, under the theory we are discussing, if the tenant alleges that he is unable to pay the rent, and his allegation is not disproved, he cannot be disturbed by any ejectment proceedings. We may imagine the case of a house with a reasonable rent of P1,000 or more per month. The tenant has been able to pay the rent for many years. But now his income has been reduced that he cannot pay the same rent anymore. According to the majority, the tenant shall be allowed to remain in the house without paying anything, even if its rent should be the only means of support of the owner and his family, and deprivation thereof would cause them incalculable sufferings of all nature.

The theory is a wanton attack against the elemental right of property, as Proudhon could do no better. It is one of the worst forms of communistic system, because it has the effect of using private property not for the common benefit of all the people but for that of a privileged class, a thing diametrically antagonistic to the humanitarian ideal of theoretical communism. It is a flagrant violation of the principle of equality which is an essential element in a democracy and is the common denominator of all processes, methods, and systems leading to the attainment of justice. That principle is the one at the bottom of the golden rule enunciated two thousand years ago in the Sermon on the Mount, the rule upon which human society can be held secure as its strongest pillar and without which peace and happiness and enlightened and progressive civilization are unattainable. Justice Holmes said: "The degree of civilization which a people has reached, no doubt, is marked by their anxiety to do as they would be done by."

For all the foregoing, we dissent from the majority decision and vote to affirm in toto the lower court's decision.

DISSENTING

HILADO, J.:

For substantially the same reasons supporting my dissent in *Moya vs. Barton* (45 Off. Gaz., 237), I dissent from the majority decision in this case. In my opinion the judgment appealed from should be affirmed.

DISSENTING

PADILLA, J.:

I dissent. The facts of this case are similar to those in *Kalaw Ledesma vs. Pictain* (45 Off. Gaz., 683, 697); and for the very same grounds and reasons set forth in my opinion in that case, especially that neither Commonwealth Act No. 689 nor Republic Act No. 66 should be given retroactive effect, I vote for the affirmance of the judgment appealed from.

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