

ALBERTO T. REYES, SATURNINO LIWANAG AND LORENZO HERNANDEZ, PETITIONERS, VS. THE COURT OF APPEALS AND TEODORO KALAW, JR., RESPONDENTS.*G.R. No. L-28466. March 27, 1971*

Ponente: REYES, J.B.L., J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/c7ac1f81dc81/>**REYES, J.B.L., J.:**

Appeal by petitioners-plaintiffs from the decision of the Court of Appeals (in CA-G. R. No. 36043-R) affirming the decision of the Court of First Instance of Manila (Civil Case No. 54369), with the sole modification that plaintiffs are ordered to pay defendant (respondent herein) the sum of P50,000.00 as temperate damages.

The pertinent facts are herein stated.

Plaintiffs-appellants are lessees of defendant's premises located at Nos. 686, 688 and 690 Rizal Avenue, Manila, where they also conduct their respective businesses. The lease was oral and on a month-to-month basis. Plaintiffs have been occupying the premises for a period of from 10 to 15 years as of the filing of the complaint. On 8 May 1962, defendant started sending out to each of said plaintiffs notices to vacate the premises to give way for the demolition of the old building occupied by them and the eventual construction of a new one. The notices were received by plaintiffs on their respective dates, namely, 8 May 1962, 21 September 1962, 10 October 1962 and 15 January 1963. Each of the said notices gave plaintiffs a period of time within which to move out. The last notice gave said plaintiffs 24 hours within which to vacate the premises.

On 16 January 1963, as previously scheduled, defendant started the demolition of the roofing and upper sidings of the building and also the fencing thereof, although the demolition of the back portion actually started on 7 January 1963.

On 17 January 1963, plaintiffs filed a complaint for forcible entry with the City Court against defendant, praying, among others, for a writ of preliminary injunction (which was granted) and damages. The defendant counterclaimed for ejectment and damages for alleged loss of the use and occupation of his premises in the form of (a) fixed losses in the amount of P177,869.06; (b) monthly losses in the amount of P27,295.00 from 15 January 1963; and (c) P1,000.00 daily losses, also from 15 January 1963, until possession is restored.

On 23 February 1963, the City Court rendered its decision in favor of plaintiffs, later amended on 24 May 1963 because of the intervening Compromise Agreement between plaintiff Go Ban and defendant, the dispositive portion of which reads:

"WHEREFORE, the COMPROMISE AGREEMENT between Go Ban and the defendant is hereby approved and judgment is hereby rendered in conformity therewith; the lease agreement between Alberto T. Reyes, Lorenzo Hernandez and Saturnino Liwanag, on one hand and the defendant on the other hereby extended to one (1) year from 23 February 1963 at the same rate (P800.00 a month); declaring the preliminary injunction here-tofore issued enjoining the defendant from further performing acts of demolition of the premises hereby declared permanent during the period of the intended lease, and ordering the defendant Teodoro Kalaw, Jr., to

restore the premises to the same condition as they were before demolition started, particularly restoring the roofing of the premises and removing the fence thereon constructed within three (3) days from receipt hereof; ordering the defendant to pay unto each of plaintiffs, except Go Ban, compensatory damages for the impairment caused on their business establishment at the rate of TWENTY-FIVE PESOS (P25.00) a day from 16 January 1963 until the premises shall have been restored to its former condition; to pay the sum of TWO HUNDRED PESOS (P200.00) as attorney's fees, plus the costs of the suit."

"Defendant's counterclaim for want of merit is hereby dismissed."

Defendant appealed the aforesaid decision to the Court of First Instance. In a decision dated 11 January 1965, later amended on 11 February 1965, the said Court dismissed the complaint and all claims and counterclaims, among others. The dispositive part of the decision follows:

"WHEREFORE, the Court hereby renders judgment, dismissing the complaint and all claims and counterclaims; ordering plaintiff Alberto Reyes to pay the P800.00 monthly rentals for and beginning with November, 1962, until he vacates the premises; ordering each of plaintiffs Saturnino Liwanag and Lorenzo Hernandez to pay defendant the P800.00 monthly rentals from 15 January 1963 until they vacate the premises; ordering the plaintiffs to vacate the premises designated as Nos. 686, 688 and 690 Rizal Avenue, Manila, immediately from and after the date this judgment becomes final and executory.

"The preliminary injunction is hereby ordered dissolved. No costs."

Both parties appealed to the Court of Appeals which, in turn, rendered its decision on 21 November 1967, affirming the decision of the Court of First Instance, with the sole modification that plaintiffs should also pay to defendant Kalaw the sum of P50,000.00 as temperate damages. The dispositive portion of the decision is quoted below:

"WHEREFORE, with the sole modification that plaintiffs are ordered to pay defendant the sum of P50,000.00 as temperate damages, the decision appealed from is AFFIRMED in all other respects. Costs in this instance against the plaintiffs in favor of defendant."

Hence, the appeal by plaintiffs to this Court. The following errors are assigned in their brief:

The Court of Appeals erred in -

1. Concluding that defendant did not take the law in his own hands, contrary to its own finding that the plaintiffs were in possession of the premises as of the time of demolition;
2. Refusing to decide the issue raised in the plaintiffs' second and third assignments of error, contrary to Section 33 of the Judiciary Act and Section 4, Rule 51, of the Revised Rules of Court; and in
3. Awarding P50,000.00 temperate damages aside from the usual monthly rental of P800.00 in favor of the defendant.

The issue of whether respondent took the law in his own hands is clearly factual. It invites calibration of the whole evidence, considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation. Being a question of fact, it is for the Court of Appeals to decide^[1], and its findings will not be disturbed by this Court unless clearly baseless or irrational.^[2] The exceptions do not obtain in this case.

It has been clearly established in the foregoing that respondent was assured of petitioners' vacating the premises after the Christmas season, specifically on or before 15 January 1963. Respondent was putting up a P1,700,000, 9-story, building in lieu of the old one occupied by petitioners, among other tenants. As early as 8 May 1962, petitioners had been already notified "to vacate within 60 days" from said date. Petitioners requested for an

extension until after the Christmas season for the reason that the 60-day period was insufficient for petitioners to move their respective businesses to new places. In the meantime, respondent completed solution of the technical problems of the proposed building. The services of architect Juan Nakpil were contracted; the loan applications for the project were followed up; municipal licenses were secured and paid for so that the construction could be started; and a number of guards were even hired to secure the site of the new building.

From 8 May 1962, three more notices were sent to petitioners, dated 21 September 1962, 10 October 1962 and 15 January 1963, that construction would commence after the Christmas season. These notices were not questioned. On the contrary, and as found by the Court of Appeals, petitioners led respondent to believe that the premises would be voluntarily vacated on or before 15 January 1963. Moreover, when the respondent started demolishing the back part of the building on 7 January 1963, which fact was known to petitioners, nothing was done to protest the demolition or ask for another extension. On 16 January 1963, when the demolition of the old building reached the portion tenanted by petitioners, petitioners saw respondent merely to get a written assurance of priority in leasing out spaces in the new building but not for another extension.

Under the foregoing circumstances, it can hardly be believed that respondent forcibly entered the leased premises and took the law in his own hands. The given assurance of vacating on or before 15 January 1963 was clearly proved. Respondent's belief in good faith that tenant petitioners would leave voluntarily as scheduled was well-founded, not only because of the uncontested reminders to vacate but also because of petitioners' passive attitude when, finally, the demolition started. The fact, therefore, that petitioners reneged on their promise and chose to continue staying in the premises at the time the scheduled demolition took place should not be taken against respondent. In view hereof, there is no reason to disturb the Court of Appeals' finding that "the defendant's act of ordering the fencing of the premises could not be considered done in bad faith (or) that he took the law in his own hands".[3] A pronouncement of good faith cannot be reviewed on appeal by certiorari,[4] especially since We find no conflict in the Court of Appeals' findings in this regard.

The second issue was raised in Appellants' Brief but not in the main petition for certiorari. It is alleged that the Court of Appeals refused to decide the second and third assignments of error presented by plaintiffs in their appeal to the said Court, which are: (a) the Court of First Instance erred in not granting plaintiffs-appellants' motion for the execution of the mandatory injunctive relief granted in the City Court decision for failure of the defendant-appellant to restore the roofings and remove the fence constructed thereon within three days from receipt of the decision and/or to pay the sum of P25.00 compensatory damages daily to each of the plaintiffs-appellants until the premises are restored to their former condition; and (b) in ordering each of the plaintiffs-appellants to pay P800.00 monthly rental in the premises under its present condition, devoid of roofings and with fencing on their frontage for at least one year subsequent to the filing of this action.

Section 33 of the Judiciary Act of 1948[5] partly provides that "every decision of the Court of Appeals shall contain complete findings of fact on all issues properly raised before it". This provision has been reproduced in Section 4, Rule 51, of the Revised Rules of Court. In the case of *Ramos, et al. vs. Ramos, et al.*,[6] it has been held that the law does not impose on the Court of Appeals the duty of stating complete findings of facts on all errors assigned but merely on all issues properly raised before it.

It is well-settled in this jurisdiction that, in a trial de novo on appeal, the Court of First Instance will not affirm, reverse, or modify the judgment appealed from inferior courts, for the simple reason that there is no judgment to affirm or modify, because all the proceedings had in the Municipal Court, including the judgment, do not in contemplation of law exist, having been vacated upon perfection of the appeal; and the only instance when said judgment appealed from is revived is when the appeal is withdrawn or dismissed.[7] For under Section 9, Rule 40, of the Rules of Court,[8] a "perfected appeal" from the city court to the court of first instance "shall operate to

vacate the judgment" of the city court, and "the action when duly docketed in the court of first instance shall stand for trial de novo upon its merits, in accordance with the regular procedure in that court, as though the same had never been tried before and was originally there commenced." [9] Since all the proceedings in the city court including the judgment become, as it were, inexistent in case of appeal to the Court of First Instance, and since trial de novo must be held in the latter court, the execution of the aforesaid decision of the City Court (requiring the lessor to restore the roofing and remove the fence and/or pay P25.00 compensatory damages daily to each of the plaintiffs-appellants until the premises are restored to their former condition) was not yet proper and warranted. Moreover, if a case is to be tried de novo, there is always the possibility that the trial court may make different findings that will support a judgment contrary to that of the inferior court. As such, the rights of the parties are changed. If the inferior court's decision were to be executed after appeal therefrom, the Court of First Instance would have to undo what it had previously ordered to be done; hence, justice would hardly be served if it were mandatory for the Court of First Instance to order the execution of the City Court's decision. As it turned out, the original judgment was superseded by that of the Court of First Instance in this case. The City Court's decision upon rendition of the Court of First Instance judgment "becomes a thing of the past, without life, purpose or effect". It is the decision of the Court of First Instance that prevails. [10] Finally, the city court decision having been superseded, the issue raised now has become moot and academic and, therefore, cannot be properly raised.

The same reasons hold true as regards the other error assigned in the Court of Appeals. Besides, the records reveal that in spite of the fencing and removal of the part of the roof, plaintiffs were able to continue their respective businesses. The Court of Appeals in fact found as not substantiated by competent evidence the claim of plaintiffs-appellants that their respective gross sales suffered a reduction. The books of plaintiff Hernandez showed an increase in his 1963 gross sales as compared to those of 1962. [11]

On the last issue of whether temperate damages may be awarded in favor of respondent landlord, it has been held that while damages may be adjudged in forcible entry and detainer cases, these "damages" mean "rents" or "the reasonable compensation for the use and occupation of the premises", [12] or "fair rental value of the property". [13] Profits which the plaintiff might have received were it not for the forcible entry or detainer do not represent a fair rental value. [14]

Former Chief Justice Moran makes the following comment as to the nature of damages that may be recovered in an action for forcible entry and detainer:

"But what is the character of these damages? Since the only issue in actions for forcible entry and detainer is physical possession, the damages which plaintiff is entitled to are such as he may have sustained as a mere possessor. Material possession involves only the enjoyment of the thing possessed, its uses and the collection of its fruits, and these are the only benefits which the possessor is deprived of in losing his possession. In other words, plaintiff is entitled only to those damages which are caused by his loss of the use and occupation of the property, and not to such damages as are caused to the land or building during the unlawful possession, which he may recover only if he were the owner of the property, and he cannot be declared as such in an action for forcible entry and detainer. Damages to property may be recovered only by the owner in an ordinary action." [15]

This Court had further occasion to explain the meaning of "damages" in ejectment cases when it said in *Mitschiener vs. Barrios*, *supra*, that -

"Undoubtedly, these pronouncements of the Supreme Court were taken into consideration by the authors of the Rules of Court when, although in section 1 of Rule 72 [16], plaintiff is authorized to sue for the restitution of possession together with damages,' in drafting section 6 of Rule 72, [17] as to judgment to be pronounced, the word 'damages' was eliminated, placing, in lieu thereof, the words 'reasonable compensation for the use and occupation of the premises'.

Sec. 6. Judgment. - If upon trial the court finds that the complaint is not true, it shall render judgment in favor of the defendant for the restitution of the premises, for the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, and for costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party, and award costs as justice requires.'

"That is, in an ejectment case, plaintiff may recover either rents or the reasonable compensation for the use and occupation of the premises, loosely designated in sections 1[18] and 8[19] of Rule 72, as 'damages', which may be designated also as 'fair rental value of the property.' When rents are adjudged no reasonable compensation for the use and occupation of the property can be adjudicated, while, inversely, when reasonable compensation is adjudged, it is because no rents are adjudicated."

In the more recent case of *Ramirez vs. Sy Chit*[20], the aforesaid ruling on the meaning of damages was reiterated when this Court held that damages recoverable by plaintiff under Section 1, Rule 70 (formerly Rule 72), are those which correspond to the reason-able value of the use and occupation of the property, which in this case is the agreed monthly rental of P230.00 for the land leased. It thus considered the award of P25.00 as damages for every day of delay in addition to the agreed monthly rental as an error and without basis in law. The pertinent portion of the decision is quoted below:

"The trial court held defendant liable 'to pay plaintiff the sum of P25.00 a day for every day of delay as damages until he finally vacates the premises, in addition to the agreed current rental that may accrue'. This is an error. The damages recoverable by the plaintiff under Section 1, Rule 70 (formerly Rule 72) are those which correspond to the reasonable value of the use and occupation of the property, which in this case is the agreed monthly rental of P230.00. The award, therefore, of P25.00 as damages for every day of delay in addition to the agreed monthly rentals is without basis in law." [21]

Since temperate damages are neither "rents" nor "reasonable com-pensation for the use and occupation of the premises", nor "fair rental value" as above-stated, and since the agreed rental itself was adjudged in favor of respondent,[22] We are constrained to deny the temperate damages awarded by the Court of Appeals.

However, in view of the plaintiffs-appellants' repeated reneging on their promises to vacate, and their resorting to litigation to unreasonably prolong their holding unto the appellee's property for eight years, the appellee is also entitled to recover in these proceedings attorneys' fees under Article 2208 of the New Civil Code (*Ramirez vs. Sy Chit*, ante), fees that we fix at P2,500. Moreover, this decision does not preclude respondent from filing in the competent court a separate suit for damages consisting of other losses allegedly sustained by him as a result of the wrongful withholding of possession by petitioners-appellants, especially since this question had been raised in the city court but were beyond its jurisdiction to award. In *Zambales Chromite Mining Co. vs. Robles*, [23] it was ruled by this Court that -

" The Rules expressly provide that upon appeal from the judgment of a justice of the peace to the court of first instance, the case shall stand for trial de novo (Section 9, Rule 40). This provision has been interpreted to mean that parties are prevented from raising issues in the court of first instance which were not raised in the justice of the peace court.

x x x x x x x x x

"We must call attention to the fact that the rules, which have the force of law, provide the manner and occasion when issues are to be raised for adjudication. If the rules were to be ignored and We permit litigants to raise issues without order and regulation, confusion would arise. This would certainly happen were we to allow the issues the defendant raised in his answer in the Court of First Instance. The defendant-appellant is not pre-cluded from raising his counterclaims in a separate action if he decides to do so. But in view of the fact that the trial in the Court of First Instance in an appeal is merely a trial de novo, We are constrained to dismiss the counterclaims in pursuance of the dictates and mandate of the rules." (Emphasis supplied)

While said damages arose out of, or are necessarily connected with, the same transaction or occurrence which was the wrongful with-holding of possession, they are not a compulsory counterclaim because they exceed the jurisdiction of the inferior court. In *Calo vs. Ajax International, Inc.*,^[24] We held that the rule that a compulsory counterclaim is barred if not set up, when applied to municipal courts presupposes that the amount involved is within the said court's jurisdiction. The reason for the rule relating to counterclaims is to avoid multiplicity of suits and to dispose of the whole matter in controversy in one action, and adjustment of defendant's demand by counterclaim rather than by independent suit.^[25] This reason, however, does not obtain where the amount exceeds the jurisdiction of the inferior court, for, as aptly stated in *Calo vs. Ajax International, Inc.*, supra -

“ even if the counterclaim in excess of the amount cognizable by the inferior court is set up, the defendant cannot obtain positive relief. The Rules allow this only for the defendant to prevent plaintiff from recovering from him (Rule 5, Section 5, Rules of Court). This means that should the court find both plaintiff's complaint and defendant's counterclaim (for the amount exceeding said court's jurisdiction) meritorious, it will simply dismiss the complaint on the ground that defendant has a bigger credit. Since defendant still has to institute a separate action for the remaining balance of his counter-claim, the previous litigation did not really settle all related controversies.”

FOR THE FOREGOING REASONS, the decision appealed from is modified by deleting therefrom the award of temperate damages, but sentencing plaintiffs-appellants to pay respondent Teodoro Kalaw, Jr., P2,500. attorney's fees, without prejudice to said respondent's right to file a separate suit with the competent court for the recovery of the other damages claimed by him in the inferior courts. Thus modified, the decision of the Court of Appeals is affirmed in all other respects. No special pronouncement as to costs.

Concepcion, C.J., Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Dizon, J., did not take part.

[1] *Vda. de Arroyo vs. El Beaterio del Santissimo Rosario de Molo*, No. L-22005, 3 May 1968, 23 SCRA 525; *Fortus vs. Novero*, No. L-22378, 29 June 1968, 23 SCRA 1330.

[2] *Fortus vs. Novero*, supra.

[3] Page 8, Court of Appeals decision.

[4] *Indias vs. Phil. Iron Mines*, L-9987, 29 April 1957; *Dee C. Chuan & Sons, Inc. vs. Nahag*, 95 Phil. 837; *NLU vs. Zip Venetian Blind, et al.*, L-15827-28, 31 May 1961, 2 SCRA 509, cited in *Nevans vs. Court of Industrial Relations*, No. L-21510, 29 June 1968, 23 SCRA 1321.

[5] Republic Act No. 296, as amended by Republic Act No. 1605, effective 23 August 1956.

[6] No. L-23007, 30 March 1967.

[7] *Co Tiamco vs. Diaz*, 75 Phil. 672; *Lichauco vs. Guash*, 76 Phil. 5.

[8] "Section 9. Effect of appeals. -- A perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly docketed in the Court of First Instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced. If the appeal is withdrawn, or dismissed for failure to prosecute, the judgment shall be deemed revived and shall forthwith be remanded to the justice of the peace or municipal court for execution."

- [9] Lizo vs. Carandang, 73 Phil. 649, cited in Cue vs. Dolla, supra.
- [10] De la Fuente vs. Jugo, 76 Phil. 262; Zarcal, et al. vs. Herrero, et al., No. L-2423, 26 May 1949, 83 Phil. 711.
- [11] Page 14, Court of Appeals decision.
- [12] Mitschiener vs. Barrios, 76 Phil. 55, cited in Garcia vs. Peña, 77 Phil. 1011.
- [13] Sparrevohn vs. Fisher, 2 Phil. 676; Mitschiener vs. Barrios, supra; Castueras vs. Bayona, 106 Phil. 340.
- [14] Sparrevohn vs. Fisher, 2 Phil. 676, supra; Igama vs. Soria, 42 Phil. 11.
- [15] 2 Moran, Comments on the Rules of Court, 1957 ed., page 301, italics supplied, cited in Dy vs. Kuizon, No. L-16654, 30 November 1961, 3 SCRA 1961.
- [16] Now Section 1, Rule 70, Revised Rules of Court.
- [17] Now Section 6, Rule 70, Revised Rules of Court, which reads:
- "Sec. 6. Judgment. - If upon trial the court finds that the allegations of the complaint are not true, it shall render judgment for the defendant to recover his costs. If it finds them to be true, it shall render judgment in favor of the plaintiff for the restitution of the pre-mises, for the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, and for costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party, and award costs as justice requires." (Underscoring supplied).
- [18] Supra.
- [19] Now Section 8, Rule 70, Revised Rules of Court.
- [20] No. L-22022, 26 December 1967, 21 SCRA 1364.
- [21] Underscoring supplied.
- [22] Dispositive portion of the Court of First Instance decision affirmed by the Court of Appeals, page 4, supra.
- [23] No. 16182, 29 August 1961, 2 SCRA 1051.
- [24] No. L-22485, 13 March 1968, 22 SCRA 996, and cases cited; See also Vivar vs. Vivar, No. L-18667, 31 August 1963, 8 SCRA 847.
- [25] See Ledesma vs. Morales, G. R. No. L-3251, 24 August 1950, 47 O. G. 12 Supp. December, 1951, page 382.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.