

**THE UNIVERSITY OF SANTO TOMAS, PLAINTIFF AND APPELLANT,
VS. VALENTIN DESCALS, DEFENDANT AND APPELLEE.***G.R. No. 11862. June 21, 1918*

Ponente: CARSON, J.

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On the 13th of February, 1843, a house in Intramuros, was subjected, exclusive of the land on which it was erected, to a censo (annuity, or perhaps more accurately, a ground rent) in favor of the University of Santo Tomas. The censo was created in a public document, duly registered, wherein the value of the capital was expressly stipulated to be P2,000, and the pension to be paid on account thereof was fixed at 5 per centum per annum upon that amount.

On the 14th of October, 1905, one Salvador Farre bought the house and the land on which it stood, apparently in ignorance of the censo to which the house was subjected, and refused to recognize the rights of the University in the premises. The University instituted an action, wherein, upon appeal to this court, the right of the University in and to the censo was maintained, and judgment was entered against Farre for the amount of the payments due thereunder. (R. G. No. 6408, decided the 6th of November, 1911)[1]

Execution was levied, upon the house (exclusive of the land upon which it stood) under this judgment, and at the sheriff's sale in the month of June, 1912, it was bought in by the University of the sum of P50.

On July 3, 1912, Valentin Descals, the defendant in this action, who had previously acquired Farre's right of redemption in the property, redeemed the house from the University, by the payment of the amount for which it had been purchased at the sheriff's sale.

On April 2, 1913, Descals paid the University P100, that being the amount due under the censo for the year 1912.

In July, 1913, the city authorities ordered the house torn down, because of the dangerous and dilapidated condition in which it was found to be upon an official inspection by the municipal officers charged with such matters.

Not long thereafter, the University, having been apprized of the issuance of this order, formally requested Descals to put the house in repair so as to avoid the necessity for its destruction under the municipal order. Descals made no attempt to put the house in repair, and in September, 1913, complied with the municipal order for its destruction under imperative directions to do so without further delay.

This action was brought by the University to recover from Descals damages in the sum of P2,000, the stipulated capital on account of which the censo was created, for his failure to maintain the house in a proper state of repair, which, as plaintiff alleges, resulted in its total destruction by order of the municipal authorities.

The defendant offered to turn over the ruins of the building to the University, and thus extinguish the censo. The offer having been declined, the stone, lumber and other materials of which it was constructed were sold under

authority of the court, and the net proceeds, after paying for the demolition of the building, amounting in all to P16, was deposited with the clerk of the court.

The trial judge gave judgment in favor of the plaintiff for P16, the value of the materials of which the house was constructed, and declared that the censo had been extinguished by the destruction of the house.

Counsel for the University (the censalista) contends that under the terms of the instrument creating the censo, it was the duty of the owner of the house (the censatario) to keep it in repair, and that he should therefore be required to indemnify the University for damages suffered by it, as censalista, as a result of the destruction of the property subjected to the censo, by orders of the municipal authorities, the measure of these damages being the capital (P2,000) with relation to which the censo was created.

Counsel for the defendant contends that through the ravages of time the house had fallen into such a state of deterioration and decay, before it came into his hands, that no ordinary repairs, short of substantially rebuilding the entire structure would be sufficient to render it safe and fit for human habitation; and, that the obligation to keep the house in repair expressly stipulated in the instrument creating the censo did not impose upon him a duty to rebuild or replace the house in the event of its destruction.

This contention as to the condition of the building is fully sustained by the record. The experts who examined it at the time when it was condemned by the municipal authorities were of opinion that the only practicable disposition which could be made of the house was to tear it down and rebuild, or sell the materials for what they were worth. The municipal building inspector and an experienced contractor were of opinion that the new material necessary to put the house in good condition would amount to 60 per cent of the whole building when completed, and that, through the lapse of time, and the deterioration and decay of the materials of which it was constructed, it could not be rendered habitable and secure without being substantially rebuilt.

The correctness of their views as to the condition of decay into which the building had fallen is confirmed by the action of the University authorities themselves, who made no attempt to put the house in repair or to save it from destruction, although they had authority under the instrument creating the censo to make necessary repairs at the expense of the owner of the house should he neglect to do so. It appears that at their request the municipal order for its destruction was temporarily suspended, in order that they might have an opportunity to take such measures as they might deem proper to protect the interests of the University in the building, and that after careful examination of the condition in which they found it, no attempt was made to repair the house, presumably, because its condition would not justify the expenditures necessary to make it habitable.

From all the evidence of record it is clear that through the ravages of time, and as a result of the deterioration and decay of the materials of which it was constructed, a considerable part of the building had become wholly useless and uninhabitable, and that the entire building had become dangerous and unfit for human habitation, at the time when it was ordered torn down by the municipal authorities; and further, that short of tearing down and rebuilding the greater part of the house, it was impracticable to put it in repair so as to make it safe and fit for human habitation.

The respective rights and liabilities of the parties are to be determined from the provisions of article 1625 of the Civil Code, which is as follows:

"When an estate charged with an annuity is totally destroyed or rendered useless by force majeure or by a fortuitous event, the annuity shall be extinguished, the payment of the pension discontinuing.

"If it is destroyed in part only, the person paying the annuity shall not be exempt from the payment of the pension, unless he prefers to abandon the estate to the annuitant.

"When there is fault on the part of the person paying the annuity, he shall be bound, in either case, to indemnify for losses and damages."

If it can be said that the property subject to a censo, which has been totally or partially "destroyed" or "rendered useless" by the deterioration and decay incident to the lapse of time, has been thus totally or partially destroyed or rendered useless by "force majeure or by a fortuitous event," it is manifested that the contentions of the University are not well founded, and cannot be maintained.

We are of opinion and so hold that the deterioration and decay in the materials of which a building is constructed, incident to the lapse of time, are causes embraced within the term "force majeure or by a fortuitous event" as those terms are used in article 1625 of the Code, and in support of our ruling it will be sufficient to insert here some extracts from the commentaries upon this article of the code by the learned Spanish author Manresa:

"By the words force majeure or fortuitous event used in the first paragraph of article 1625, as already stated, the law alludes to every cause independent of the will of the annuitant, of every fault on his part. There is nothing else to do but to so admit, not only because the Code opposes to the annuitant no other defense except fortuitous event and fault, without making other distinctions, but also because in reality every cause foreign, if that term may be used, to the annuitant, juridically and reasonably demands the same solution, and because all these causes can be reduced to a fortuitous event, or to force majeure.

"The garden is lost in a flood, the terrace disappears during an earthquake, the house is burned, the structure falls and is transformed into ruins. If the loss or ruin is complete, if the estate, the subject matter of the right, is lacking, the annuity is completely extinguished. Therefore the lessor loses both the capital and the rents, and the annuitant, that which may correspond to him.

"The solution is just. In default of all, the lessor cannot demand anything. The estate, the capital, the rents, the thing itself and the obligation formed an inseparable whole. If the lessor loses much, the annuitant also loses much. This is an application to annuity of the general doctrine regarding the extinction of real rights, by the loss of the objects which they charged.

"When the loss was complete, the annuity does not revive ; nothing remains and the lessor cannot further allege any right over anything." (Vol. 11, pp. 93, 94.)

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"Just as in the case of the complete loss of the estate so in the case of partial loss, the Code concerns itself only with two suppositions—the fault of the annuitant and a fortuitous event or force majeure. Fault comprises reasonably fraud and the volition of the annuitant. The fortuitous event or force majeure must comprise every cause which is not volition, the fraud or the simple fault of the annuitant himself. The gradual diminution by reason of the nature of the productive forces of the estate of the natural deterioration of the same which, taken from the Mortgage Law, are cited as foreign in part to those supposed by the Code are facts essentially alike, because to the annuitant who in no way can avoid them they always represent a case of force majeure included, without shadow of doubt, in paragraphs 1 and 2 of article 1625. Can the legislator be required to use always the same words to express his idea or condescend to expound in detail all the cases which he deems comprised in a general conception? Can it be dreamed that the law may adopt one solution for a case of fortuitous event or force majeure, and a different one for the natural deterioration of the estate or the gradual diminution of its productive forces ?

"If we pay attention not to the words of the law but to its concept, not to its letter but to its spirit, we can do no less than admit that the suppositions distinguished in the Mortgage Law are essentially the same ones that are

separated in the Civil Code and, the solutions being different, we shall necessarily have to deduce that one cannot be preserved with the other, that one or the other has to disappear; and in such conflict it is inevitable to sacrifice articles 151 and 152 of the Mortgage Law to the clear and express wording of article 1625 of the Civil Code.

"That the Code respects in general the enforcement of the Mortgage Law and expressly orders that this governs with regard to the nature, form and effects of the inscription, or to the extension, requisites and effects of the mortgage, means nothing. Articles 151 and 152 deal with principles of a civil nature, properly belonging to the Civil Code, rights regulated by same in a definite manner, and its doctrine, as posterior and enunciated within its own proper sphere of action, cannot but be preferred. Whenever a later law contradicts the provisions of a former one on the same subject and instance, the repeal is evident. This is the case in which we now find ourselves.

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"When an estate charged with an annuity is totally destroyed, rendered useless in part, damaged, or made less productive, by a fortuitous event or force majeure, in short, by any cause which is not the fraud, fault or the volition of the annuitant, the latter cannot in any case legally demand the reduction of the rent. His right consists solely in giving up the estate to the lessor, if he does not wish, or cannot continue paying the whole rent. Notwithstanding this, the lessor and the annuitant can voluntarily agree to the reduction of the rents, or adopt a disjunct solution.

"There is no necessity of investigating or proving whether or not there is left in the state any value or product sufficient to cover or pay the rent. Whatever may be left, the annuitant better than any body else can appreciate his situation, and when the day arrives in which it does not suit him to pay the whole rent, either because the estate does not produce sufficiently, or because his scant gain does not compensate his work, or because it seems insignificant to him, he has the right to give up the estate, to relinquish it to the lessor, in order that he may keep it, or lease it, or sell it, or make of it the use which seems best to him. The abandonment, therefore, represents the extinction of the annuity.

"The absolute terms with which article 1625 is expressed admits of no other solution. It can be said that by it the abandonment of the estate is erected, and therefore the extinction of the annuity, in a right of the annuitant; but aside from the fact that the law requires the immovable to be lost or in part damaged, there exists the interest of the annuitant himself who will only resort to such extreme remedy when he really cannot pay the rent with some relief, in which case the solution is just, for however great may be the loss to the lessor, that of the annuitant is even greater for with him nothing remains. Furthermore, by common agreement, another remedy may be selected, and the greater the value that remains in the estate the more advantageous will the cession be to the lessor," (pp. 99-101, supra.)

The trial judge appears to have treated the condition into which the house had fallen as one of "partial" destruction, exempting the defendant from payment of the pension upon his abandonment of the material to the University. We do not deem it necessary to consider whether, under the peculiar circumstances of this case (wherein the house, apart from the land on which it was erected was subjected to the censo), the unsafe and uninhabitable condition of the house necessitating its destruction should be held to be a total or a partial destruction of the tenement as these terms are used in the statute, because no appeal was taken from the judgment of the trial court directing the payment to the University of the net proceeds of the sale of the materials of which the house was composed.

Although the censo under consideration in this case was created in the year 1843, counsel for both appellant, and appellee based their arguments as to the respective rights of the parties upon the express provisions of the Civil Code of 1889, without discussing the question from the standpoint of the law in existence when the censo was

created. As we have disposed of the contentions of the parties by reference to the provisions of the Civil Code cited herein and the doctrine to be derived therefrom, it may be well to indicate that we have done so not merely because counsel have proceeded on the assumption that the code provisions are applicable ; but rather on the grounds set forth in the following citation from the learned Spanish author whom we have already cited at length in this opinion:

"TRANSITORY RIGHT.

"In our opinion, articles 151 to 152 of the former Mortgage Law have been repealed by the Civil Code. However, they constitute the former law on the subject. The Code legislates only over the annuities constituted after its publication inasmuch as those constituted before that date are not expressly referred to nor determined therein. There are many in this condition which exist and, considering the nature of the annuities, will subsist for a long time. When the estates charged with the annuity prior to the Code suffer damage, must the principles of the Mortgage Law or those of the Civil Code be applied? Can the annuitant for example demand the reduction of the rents?

"We believe, that the second transitory provision should be applied, but holding that the annuitant, by the mere fact of the constitution of the annuity, had not really acquired the rights established in the said articles of the Mortgage Law; that these rights are born and can be exercised only at the happening of the damage to the estate subjected to the annuity; and that the date of the damage is therefore that which determines whether said law or articles 1625 and 1627 of the Civil Code should be applied." (Vol. 11, Manresa, p. 106).

We conclude that the judgment entered in the court below should be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Araullo, Street, Malcolm, Avanceña, and Fisher, JJ., concur.

[1] University of Santo Tomas vs. Farre, 20 Phil. Rep., 639.

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