

LUIS GUZMAN, AS ADMINISTRATOR OF THE ESTATE OF DONA ERIBERTA SANCHEZ, DECEASED, PETITIONER, VS. FAUSTINO LICHAUCO, HONORABLE CARLOS IMPERIAL, JUDGE OF THE COURT OF FIRST INSTANC...*G. R. No. 17986. October 21, 1921*

Ponente: STREET, J.

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The respondent, Faustino Lichauco, is at present prosecuting two actions of unlawful detainer to recover the possession of certain properties located on Rizal Avenue, in the city of Manila. In one of these actions Luis Guzman is named as defendant, in his capacity as administrator of the estate of Dona Eriberta Sanchez de Guzman. In the other action Jose Guzman is the person named as defendant, but Luis Guzman has intervened in his capacity as administrator; and all the property in question appears to be in his possession. The plaintiff was successful in both these actions before the justice of the peace, who assessed the reasonable value of the use and occupation of the respective premises, in the one case at P250, and in the other at P300, per month.

The unsuccessful defendants having appealed in both cases upon December 9, 1920, to the Court of First Instance of Manila, it became their duty, in conformity with the provisions of section 88 of the Code of Civil Procedure, as amended by Act No. 2588, in case they desired to avoid the immediate execution of the judgment pending the appeal, to pay to the plaintiff, or into court, "on or before the tenth day of each calendar month," the sums of money respectively fixed by the justice of the peace as the reasonable value of the use and occupation; and such payments have in fact been made by the defendants each month, though in most instances later than the tenth of the month, that is to say, respectively on February 14, March 18, April 11, May 10, June 10, July 11, August 11.

Considering these payments to be dilatory, under the provision of law above referred to, and being further desirous of obtaining the possession of the premises at once the plaintiff, through his attorneys, on August 16, 1921, moved the Court of First Instance to execute the judgment, for failure of the defendants—appellants in that court—to make payment on or before the tenth of the month then current. To this motion his Honor, Judge Carlos Imperial, acceded, and an order was accordingly entered for the immediate execution of the judgment.

The present petition was thereupon filed in this court by Luis Guzman, administrator, as aforesaid, against the respondents named in the caption hereof, for the purpose of obtaining relief from said order; and the respondents have duly demurred.

The petition purports to be an application for the writ of mandamus but the facts stated show that proper remedy—supposing any remedy at all to be here available—is by petition for the writ of certiorari, to quash the order complained of; and in conformity with the constant practice of this court always to entertain an original petition for relief in the aspect most conformable with the facts presented, we shall consider this petition in the character of an application for the writ of certiorari. We may state in passing that the petition contains a request for a preliminary injunction to restrain the court from executing the order referred to, but this application was

refused by us.

Omitting mention of certain features of the litigation as not being vital to the question before us, it may be stated that the contention for the petitioner is to the effect that, in computing the time within which the monthly payments are to be made by a defendant who has appealed from the decision of a justice of the peace, under section 88 of the Code of Civil Procedure, as amended, the date of the appeal is to be taken as the point of departure and from thence the months are to be computed as of thirty days length, as indicated in article 7 of the Civil Code, and that the obligated party has ten days from the date of the expiration of this month, within which to make payment for that month. Applying this to the present case the date from which the computation begins should be taken to be December 9, and the several succeeding months would have expired on or about January 8, February 7, March 9, April 8, May 8, etc. Supposing that the petitioner had ten days thereafter within which to make the required payments, the obligation was in each instance absolved in due time.

For the respondent it is contended that payment should be made for each entire month in the calendar on or before the tenth day of the succeeding month, and this we think is clearly the mode of computation intended in section 88 of the Code of Civil Procedure, as amended. This we consider true whether reference is had to the English expression "on or before the tenth day of each calendar month," used in Acts Nos. 1778 and 2588, or to the Spanish expression "el dia diez de cada mes civil, o antes," used in the Spanish text. The word "tenth," used in connection with "month," indubitably identifies the day of payment as the tenth in sequence of the days of which the respective calendar months are comprised. The English text of the law does not admit of doubt upon this point; and if the Spanish were in any degree ambiguous, its meaning would be determined by the English.

We may add that section 13 of the Administrative Code (1917) declares that the term "month" shall be understood to refer to calendar month; and this undoubtedly changes article 7 of the Civil Code in so far as the latter fixes the length of a month at thirty days.

From what has been said it is apparent that the payment effected on August 11, 1921, was one day late. The action of the respondent judge in awarding immediate execution was therefore in conformity with law. The demurrer must accordingly be sustained, and unless within five days after notification hereof the petitioner shall so amend his petition as to show a sufficient cause of action, an order absolute will be entered, dismissing the same, with costs. So ordered.

Mapa, C. J., Araullo, Avancena, and Villamor, JJ., concur.

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