

JOSE V. RAMIREZ, PLAINTIFF AND APPELLEE, VS. FLORENCIO REYES, DEFENDANT AND APPELLANT.*G.R. No. 216. February 27, 1947*

Ponente: PARAS, J.

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This is an appeal by the defendant from a judgment of the Court of First Instance of Manila which—like that of the court of origin (Municipal Court)—sustains plaintiff's complaint for ejectment and accordingly orders the defendant to vacate the premises known as 428-430 Azcarraga, Manila, and to pay a monthly rental of P250 from May, 1945, and the costs.

The appellant insists that the appellee is not the real party in interest, because he is merely administering the property in question in behalf and for the benefit of its owners, Basilisa Gonzales and Carmen Gorricho de Aguado. According to the evidence, however, the appellee had always acted in his own name with reference to appellant's lease, in which case the appellee alone could have, as to said contract, a right of action against the appellant, and vice versa. (Article 1717, Civil Code; article 246, Code of Commerce.)

The appealed decision held that appellant's lease "was from month to month and not for an indefinite period, as defendant had vigorously contended." This pronouncement, which is correct and decisive of all other contentions of the appellant, is assailed in the latter's fourth assignment of error. Appellant's testimony is not only at war with that of appellee, but is negated by the circumstance that the rental rate had been changed from time to time, such that the original P85 or P90 became as high as P250 before the war and P400 shortly before the liberation. Neither the fact that appellant has occupied the place for twenty years, nor the fact that he had made improvements therein will prove appellant's allegation. The first rather shows that the appellee had not heretofore chosen to avail himself of the right to terminate; the second was of course necessary for his business. It is not unlikely that the appellant did not insist in having a written contract of lease with a fixed duration, because, as his counsel aptly points out, at the time the appellant moved into the premises, "monthly term leases worked no injury or hardship, as when a tenant was ejected from one house he could find another without any difficulty."

Article 1581 of the Civil Code, providing that in default of an agreement as to the term of the lease, it is understood as being from month to month when the rent is monthly, and that the lease shall terminate without necessity of a special notice upon the expiration of the term, is still the law, which we are bound to enforce. We cannot, by a mere judicial pronouncement, legislate it out. While a tenant has a right to invoke and rely on the good conscience of his landlord, it is still safer for the former to have the foresight of guarding against contingencies that may be legally utilized by the landlord to the latter's advantage.

Under article 1581 of the Civil Code, the right of the landlord to end the lease after every month, if the rent is monthly, cannot be defeated by the tenant's timely payment of the rent or by his willingness to continue doing so. In other words, the landlord may terminate the lease for any reason other than default in the payment of the rent. As a matter of fact, the complaint is predicated on appellee's decision to terminate the month to month lease after

March 31, 1945, and, by further sufferance, after April 30, 1945. Hence, appellant's argument under the second and third assignments of error to the effect that he had paid the rentals for February and March, 1945, on time and that the appellee is ejecting the appellant because the latter refused to pay the new exorbitant rental imposed by the appellee, loses its point and importance.

The appealed judgment is affirmed. So ordered, with costs against the appellant.

Moran, C.J., Feria, Pablo, Perfecto, Hilado, Bengzon, Briones, Hontiveros, Padilla, and Tuason, JJ., concur.

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