

JOSE ITURRALDE, PLAINTIFF AND APPELLANT, VS. RAMON MAGCAUAS CALIAS, DEFENDANT AND APPELLEE.

G.R.No. 2625. January 16, 1908

Ponente: MAPA, J.

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MAPA, J.:

The complaint in this case was filed on the 19th of March, 1904. The ejectment of the defendant from a building lot appertaining to the estate called "La Estanzuela," leased to him, was asked because of the nonpayment of the rentals due for the years 1902 and 1903.

The case was decided in favor of the defendant the complaint being dismissed.

The judgment reads:

"Without prejudice to his obligation to pay to the plaintiff the sum of two pesos and fifty centimos as rent for the year 1902, and without any special ruling as to costs. And the right is reserved to the administrator of the hacienda to terminate the contract upon giving the prior notice required by law, and also the right of action to recover the said property, with an indemnity for such losses and damages as he may have suffered."

The record shows that the defendant has been the lessee of the lot in question for more than sixteen years; that the rental which, according to contract, he was obliged to pay was 2 pesos and 50 centimos per annum; that in 1902, the administrator of the hacienda submitted a new contract, increasing the rent to 12 pesos and 50 centimos per annum, beginning with the following year 1903, to which new lease the defendant did not conform, but continued, however, to occupy the land; that in due course the latter tried to pay the rent for 1902, but did not succeed because the plaintiff refused to accept the same as long as the defendant did not sign the new contract; and that by reason of the latter's failure to accede to the demand of the plaintiff, the rentals for the years 1902 and 1903 were still unpaid when the complaint was filed in 1904.

We do not consider as proven the allegation made by the defendant in his answer to the complaint, to the effect that it was an essential condition of the original contract that the rental of 2 pesos and 50 centimos per annum was not susceptible of increase or decrease, and that he could not be deprived of the enjoyment of the land as long as he continued the payment of said rent; therefore, we must entirely ignore this part of the controversy.

If, as stated above, the rentals for the years 1902 and 1903 had not been paid at the time when the complaint was presented, which fact was acknowledged by the defendant himself when testifying at the trial of the case, it is clear and evident, as against the conclusion of the court below in the judgment appealed from, that on the part of the said defendant there was an actual failure to pay the rent. The materiality of this fact, whatever may have been the cause that determined it, can in no manner be discussed in this case. The utmost that could be considered would be the legal imputability thereof. And this aspect of the question arises from the fact that we have considered as substantiated the fact that the defendant offered to pay said rents to the plaintiff, and that the latter declined to accept them because the defendant would not agree to the new contract increasing the rent, from and including the year 1903, to 12 pesos and 50 centimos per annum. The amount offered by the defendant for the

year 1903 Avas the same as for 1902, namely, 2 pesos and 50 centimos, as he never consented to the increase of the rent suggested in the new contract.

The question of imputability in favor of the defendant is decided by the judgment appealed from: (a) With reference to the 12 pesos and 50 centimos per annum demanded by the plaintiff for the year 1903, for the reason that, so the judgment reads, there was no agreement as to the increase of the rent, and the lease contract being consensual in nature does not become perfected nor is it enforceable until consented to by the contracting parties as to the thing and the price thereof; (b) with regard to the 2 pesos and 50 centimos due for 1902, for the reason also, according to said judgment, that the defendant was willing; to pay the original rent, and if the payment was not made it was due to the disagreement between the parties as to the conditions in the new lease contract for the same land.

The consequence of such premises is the declaration contained in the judgment, that on the part of the lessee there was no failure to comply with his main obligation under the contract, and that, therefore, the action brought on the ground of failure to pay the rental agreed to is contrary to law.

It is thus clearly seen that the judge below considered the original lease contract as subsisting. In no other way could the court arrive at the conclusion that no legal reason exists to effect the termination of said contract; and, moreover, there appears the reservation made in the judgment in favor of the plaintiff's right to terminate the contract, upon giving the prior notice required by the law. Such reservation would of course have no reason to exist if the judge had considered that the said contract had terminated. And he does not so consider it because, according to the judge himself, the record contains no positive evidence that, prior to the filing of the complaint, one year's previous notice had been given to the defendant, such as would be necessary in order to terminate a lease of rural property for an indefinite period.

According to our opinion, the merits of the case appear in all respects to the contrary. It has been proven by the testimony of several witnesses, including the defendant himself, that lie was several times requested to sign a new contract whereby the rental of 2 pesos and 50 centimos was increased to 12 pesos and 50 centimos per annum, beginning with the year 1903. To such an extent is this true that, according to the defendant himself, it was the very reason why the rentals for 1902 and 1903 were not paid, inasmuch as he did not conform to the increase of the rent suggested by the plaintiff. Such request was equivalent to, and as a matter of fact it was, an actual case of ejectment. The supreme court of Spain has so held in its decision of November 8, 1867, which establishes the following doctrine:

"In view of the fact that the law does not prescribe the form or special and exact manner in which an ejectment is to be carried out, the way in which the parties shall mutually agree, and with the due prior notice, their intention to terminate the lease contract when the same is made for an indefinite period is left to their free will. The request for a new lease contract made by the owner to the person occupying his property is a real statement of his intent to put an end to the previous lease executed for an indefinite period, and has the legal character of an ejectment, inasmuch as, if the tenant does not accept the new contract, he would be unavoidably bound to vacate the property within the legal period."

In the present case the precise date on which the first request was made to the defendant for the execution of the new contract does not appear, but it was, however, made in the year 1902. It is thus positively asserted by one of the witnesses, and is further implied from the fact that, when the defendant tried at the time to pay the rent for 1902, as he states, his disagreement with the. plaintiff, in respect to the conditions that he considered burdensome in the said new contract, had already arisen. This being the case, it results that the plaintiff's notification to the defendant which, as already stated, amounts to a real ejectment, was made one year in advance of the date of the complaint, and that therefore it was made with the prior notice required by law, even if in this case were applied,

as the court below does in the judgment appealed from, the legislation in force prior to the present Civil Code, which ruled at the time when the original lease was entered into, inasmuch as under the same one year's prior notice was to be mutually given by the lessor and the lessee for terminating contracts for the lease of rural property when made without a fixed period.

It appears from the record, which is very deficient, that the property in question was more urban than rural in character because it is described in the complaint as land destined for the building of houses. This description has not been contradicted by the defendant, and apparently it was accepted by the court below, for in the judgment appealed from the denomination of solar (a building lot) is repeatedly given to the said parcel, of land and, according to the official Spanish dictionary, it means the soil whereon a house or dwelling is erected, or whereon the same was erected. This consideration is corroborated by the statement of the defendant, asserting that on the said land exists a house which cost him 3,500 pesos to build, while the trees and other things planted thereon had only cost 80 pesos; such a fact shows, in our opinion, that this question refers in reality to land intended chiefly for the erection of houses, and is not devoted to agricultural purposes, which is the circumstance that characterizes property of the latter description. This being the case, the term for ejectment, according to the law applied by the court below, would only be forty days.

In any case the inevitable conclusion is that in 1903 the original contract, fixing the rent at 2 pesos and 50 centimos per annum, was terminated by virtue of the repeated intimations made to the defendant regarding the new contract increasing the rent to 12 pesos and 50 centimos per annum. Hence, the defendant had no right to demand that the original contract should prevail, offering to pay the rental of 2 pesos and 50 centimos therein stipulated, for the said year 1903. Since, he continued to occupy the land notwithstanding the fact that he did not agree to the conditions of the new contract submitted by the plaintiff, he was under the obligation to pay a just and reasonable rent for the occupation and enjoyment of the land beginning with said year. He was then well aware that the plaintiff claimed a rental of 12 pesos and 50 centimos per annum, which is the same as now demanded in the complaint. If in the opinion of the defendant the rent was excessive, he should have so alleged as a defense in his answer to the complaint, in order that evidence in connection therewith might have been adduced at the trial. He made no allegation whatever in this sense and based his exception on entirely different grounds, thereby excluding from all controversy the claim of the defendant. For this reason, and in the absence of proof to the contrary, we consider that the rental of 12 pesos and 50 centimos per annum, demanded by the plaintiff for the succeeding years beginning with 1903, inclusive, is just and reasonable, in conformity with the settled rule of the court in the cases of *Iturralde vs. Alfonso*", No. 3402 (7 Phil. Rep., 576), and *Iturralde vs. Evangelista*, No. 3406 (7 Phil. Rep., 588).

And in view of the fact that the defendant has not paid nor even offered to pay the aforesaid rent for the year 1903, we hereby hold that the demand of the complaint for an ejectment is in accordance with the law, even if the rent for the year 1902 were ignored, and it is not necessary, for the purposes of this decision, to dwell on the sufficiency of the offer of payment made by the defendant.

Therefore, the judgment appealed from is hereby reversed, the defendant being sentenced to place the plaintiff in possession of the land in question, and to pay him the sum of 2 pesos and 50 centimos as rent due for the year 1902, and the sum of 12 pesos and 50 centimos for each of the succeeding years beginning with 1903, until the execution of such sentence as may be entered by virtue of this decision; and in view of the fact that in the complaint the payment of the rentals corresponding to the years 1902 and 1903 alone is asked, the amendment of the same is hereby ordered pursuant to the provisions of section 126 of the Code of Procedure in Civil Actions, to the effect that the request therein shall include the rental for the years following 1903, until the sentence is executed. With the costs of the first instance against the defendant, it is so ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

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