

JOSE ITURRALDE, PLAINTIFF AND APPELLANT, VS. ANTONIO GARDUÑO, DEFENDANT AND APPELLEE.*G.R.No. 2797. January 16, 1908*

Ponente: MAPA, J.

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The question in connection with the nonpayment of rentals for the years 1902 and 1903, set up in this action, is identical with that resolved by us in case No. 2625, Iturralde vs. Magcauas[1] (6 Off. Gaz., 542), which was decided in favor of the plaintiff. For the reasons set forth in said decision, we also find in favor of the plaintiff in the present case, holding that the defendant failed to fulfil his obligation to pay a just and reasonable rent for the occupation of the land in question during the year 1903, and that we consider as a just and reasonable rental the sum of 9 pesos per annum as claimed in the complaint, from and including the year 1903. This being without prejudice to the obligation he was under, as expressly recognized by him, and still outstanding, to pay the rental of 1 peso and 50 cents, agreed to in the original lease, for the year 1902.

The other question to be decided is whether or not the defense alleged by the defendant has been proven, to the effect that the rental of 1 peso and 50 cents per annum is not susceptible of being either increased or decreased and that he, the defendant, can not be ejected so long as he punctually pays the rent according to the condition" stipulated in his contract. The court below held that this condition was proven, and considering that in accordance therewith the duration of the lease was left to the will of the defendant, applied in this case the provisions of article 1128 of the Civil Code and the doctrine established by this court, in case No. 967, Dario and Gaudencio Eleizegui vs. The Manila Lawn Tennis Club,[2] and in consequence thereof the complaint was dismissed, reserving to the plaintiff the right to commence another action to obtain the designation of the period for the termination of the lease.

In our opinion the evidence does not support the said conclusion of the judgment appealed from. When testifying with regard to his contract the defendant stated that "my obligation is the same which I have set out in my answer to the complaint, and which I acquired by inheritance from my ancestors, and therefore I respect this obligation." Further on he adds that he did not pay more than 1 peso and 50 cents "because it is the only obligation which his ancestors had contracted with respect to the owner of the so-called hacienda." According to this, the defendant did not personally enter into any contract with the owner or owners of the land in litigation, and simply stood by the contract which he says had been entered into by his ancestors. The fact is that he does not specify what were the conditions stipulated in the contract; at any rate his testimony was solely hearsay, inasmuch as, from his own declarations, it is to be deduced that he was not a witness present at the making of said contract, nor could he have witnessed it in view of the fact that it is more than fifty years old, as stated by the defendant when referring to said contract in his answer to the complaint. Neither does the testimony of the only other witness offered by the defendant prove anything further, because the questions put to this witness, who is also a tenant on the plaintiff's hacienda, and consequently his answers, had to do solely and exclusively with his own tenancy, without referring at all to that of the defendant.

The fact that the defendant or his ancestors had built a house valued at 550 pesos, and planted fruit trees on the land in question, which, according to the judgment appealed from, impresses upon the contract the character of an indefinite term and implies long duration, does not prove the claims of the defendant, for the reason that the duration of lease contracts depends on what may have been stipulated by the parties at the time when the same were entered into, and not on the more or less importance of the improvements introduced or effected by the tenant on the leased property. Nor has the circumstance alleged by the defendant in his answer, that the fruit trees above alluded to require from eight to eleven years to yield the first crop, any importance in this case for the effects of article 1577 of the Civil Code, not only because no evidence has been adduced in the premises but also because the contract, according to the statement of the defendant himself, is more than fifty years old.

Therefore, there being no proof, not even by implication from the nature and circumstances of the contract, that the duration thereof was left in any way to the will of the defendant, it is not proper to apply to this case the legal provision and the settled rule of this court, quoted in the judgment appealed from.

The judgment of the court below is hereby reversed and the defendant is directed to return to the plaintiff the land in controversy, and pay to him the sum of 1 peso and 50 cents as rent for the year 1902, and the sum of 9 pesos for each of the succeeding years, beginning with 1903, until the time when the judgment entered in this suit shall be executed; and in view of the fact that, in the complaint, only payment of the rentals for the years 1902 and 1903 is asked, an amendment thereof is ordered, in pursuance of the provisions of section 126 of the Code of Civil Procedure, so that the demand shall include the rent for the years following the year 1903, until the execution of the judgment, with the costs of the first instance against the defendant. So ordered.

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

Carson, J., reserves his vote.

[1] Page 599, *supra*.

[2] Phil. Rep., 309.

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