

**CECILIA ORTIZ ET AL., PLAINTIFFS AND APPELLEES, VS.
ALEJANDRO BALGOS, DEFENDANT AND APPELLANT.***G.R. No. 31338. December 27, 1929*

Ponente: MALCOLM, J.

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Defendant appeals from a judgment of the Court of First Instance of Capiz, awarding the plaintiffs the sum of P33,991.23 and assigns as the principal error committed by the trial court the action taken in not allowing the defendant to present his evidence at the trial of the case.

The plaintiffs are the owners of a considerable tract of land situated in the municipality of Panay, Province of Capiz. On January 20, 1922, the representative of the plaintiffs leased this land to Fortunato Tinsay. The latter, in turn, on September 7, 1922, subleased the property to Alejandro Balgos. In a notarial document of approximately the same date, Balgos made himself responsible for the obligations contracted by Tinsay.

In 1926, the plaintiffs instituted the present action based on the contracts of lease of their property against Alejandro Balgos. He interposed a demurrer to the complaint on three grounds, including an alleged defect of parties defendant. This demurrer was overruled. Thereupon, the defendant presented an answer in which as a special defense there was reiterated the failure of the complaint to include Fortunato Tinsay as a necessary defendant.

The case was called for trial and proceeded to the point where counsel for the plaintiffs announced that he had closed the presentation of his evidence. Immediately counsel for the defendant asked for dismissal because of the obstinacy of the plaintiffs in omitting as a defendant, a very necessary party. This motion was denied by the trial judge. After a recess and when the court had reconvened, counsel for the defendant announced his readiness to present his evidence. But the attorney for the plaintiffs registered his opposition, citing two decisions of this court. The trial judge, ruling on the matter, decided that the defense was without right to submit evidence. A motion for reconsideration was also denied. After the rendition of judgment predicated on plaintiffs' evidence, a motion for a new trial, supported by affidavits, met the same fate.

The two cases cited by counsel for the plaintiffs and relied upon by the trial judge when he ruled against the right of the defense to present evidence, were *Demeterio vs. Lopez* ([1927], 50 Phil., 45), and *Moody, Aronson & Co. vs. Hotel Bilbao* ([1927], 50 Phil., 198). The case first mentioned was an election contest, and there it was held that if the protestee presents a motion for dismissal or a demurrer to the evidence introduced by the protestant after the latter has rested, he thereby impliedly waives his right to present his own evidence; and if the ruling on his motion or demurrer is adverse, he cannot be permitted to present such evidence as he may have, and the trial court must finally decide the contest. In the case last mentioned, the doctrine announced was that the defendant who, after the plaintiff has submitted his evidence, makes a motion to dismiss which the trial court in a decision grants, and on appeal of the plaintiff, has the judgment reversed, cannot then be permitted to produce evidence in defense.

While the trial judge is to be commended for his zeal in endeavoring to follow the decisions of this court, yet he seems to have misunderstood the principles announced in these two cases. Neither case is here controlling. There has not been interposed a demurrer to the evidence, or motion for dismissal because of the insufficiency of plaintiffs' evidence. All that the defendant did was, for the third time, to complain of the trial proceeding without the joinder of another party as defendant. While the position taken by the defendant appears legally unsustainable (Civil Code, articles 1550 et seq.), altho it might have been better for all concerned to have brought in Tinsay as a party defendant, nevertheless, the motion made by the defendant could be decided as a legal question. Once such motion was denied, there was no reason why, in all fairness, the defendant should not be permitted to present his evidence.

Agreeable to the foregoing pronouncements, the judgment appealed from will be set aside, and the record will be remanded to the court of origin, where the trial will proceed to conclusion from the point where it was interrupted by the order of the trial judge which prohibited the defendant from submitting evidence. Without special pronouncement as to costs in this instance, it will be so ordered.

Avanceña, C. J., Johnson, Street, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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