

**THE ROMAN CATHOLIC APOSTOLIC CHURCH ET. AL., PLAINTIFFS
AND APPELLANTS, VS. ISABEL FAMILIAR ET AL., DEFENDANTS AND
APPELLEES.***G.R. No. 4701. September 22, 1908*

Ponente: TRACEY, J.

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Since times beyond the memory of the oldest witnesses there stood upon the land in dispute in Uacas, Cavite Viejo, a Roman Catholic chapel, in use for religious purposes until September, 1905, when it was destroyed by a typhoon. Thereafter the defendants, who owned the adjoining land, took possession of it and continued to hold it as a part of their own property. In May, 1906, the plaintiff brought this action in the Court of First Instance to recover possession of it, and the defendants claim that the land on which the chapel stood originally belonged to their ancestor and that the ownership of it by him and by them was admitted by the regular annual payment to them by an *hermano mayor* of the sum of 50 centavos, and on this ground the Court of First Instance of Cavite awarded them judgment. It is clear that this defense can not prevail for several reasons: First, there is nothing to connect this plaintiff with the alleged annual payment. There is not a word to prove a *cofradia*, and its existence can not be inferred from the simple existence of an *hermano mayor*. (*The Roman Catholic Apostolic Church vs. Santos*, 7 Phil. Rep., 66.) The payment of this sum of 50 centavos, while sustained by declarations of two former *hermanos mayores*, is disputed by many witnesses in a position to know about it, and its insignificance is hardly consistent with an annual rental. Second, the defense necessarily assumes as its basis the existence of the relation of landlord and tenant between the defendant and the plaintiff or its representatives. If such a relation existed, it could not be terminated arbitrarily by the act of the defendants; the tenant had the same right to retain possession of the property after the destruction of the chapel as before that event, until the lease had been put an end to by regular process of law. A landlord may not summarily enter and dispossess his tenant even for nonpayment of rent; and until the lease is legally terminated the tenant has the right to possession and may recover it from the landlord. (*Cioco vs. Muro*, 9 Phil. Rep., 100; *Bago vs. Garcia*, 5 Phil. Rep., 524; *Bishop of Cebu vs. Mangaron*, 6 Phil. Rep., 286.) There is nothing conflicting with this doctrine in the case of *Evangelista vs. Ver* (8 Phil. Rep., 653). There the plaintiff was defeated because in the opinion of the majority of the court he failed to establish the fact of anterior possession, the proofs in their opinion showing such a relation of the two parties to each other and to their common superior, the owner, as to preclude the possibility of an exclusive possession in either, the defendant indeed never having given up the occupancy of the property, but the plaintiff having in fact and by necessary construction of his acts abandoned it. Nor was it clear that the plaintiff, on his own showing, had been deprived of possession by "force, intimidation, strategy, or stealth" (5 Phil. Rep., 74), or by violation of a suitable contract, so as to bring his action within the scope of section 80, nor that it had been so treated by the court below. (*Rosco vs. Rebuena*, 6 Off. Gaz., 1463.[1]) The principle of the decisions on that section is not affected by that case.

The action appears to be well laid under the statute. It is only when brought for the possession of land detained by

force, or by one of the other means specified in section 80 of the Code of Civil Procedure that it must be commenced within the year in a court of the justice of the peace, otherwise it may be begun in a Court of First Instance, (Ledesma vs. Marcos, 9 Phil. Rep., 618; Alonso vs. Municipality of Placer, 5 Phil. Rep., 71.)

This is a possessory action only and on the proofs the plaintiff is entitled to the possession of the property. The judgment of the Court of First Instance in favor of the defendants is reversed, without costs. So ordered.

Arellano, C. J., Torres, Mapa, and Willard, JJ.,

CARSON, J.:

I reserve my vote.

[1] Page 300, supra.

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