

**THE MUNICIPALITY OF MONCADA, PLAINTIFF AND APPELLEE, VS.  
PIO CAJUIGAN ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 7048. January 12, 1912*

Ponente: TRENT, J.

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This case comes before us on appeal from a judgment of the Court of First Instance of the Province of Tarlac, the Honorable Julio Llorente presiding, condemning the defendants, the first as principal and the other three as sureties, to pay the plaintiff the sum of P1,855, together with penalties, interest, and costs.

The municipality of Moncada and the defendant, Pio Cajuigan, entered into a contract of lease whereby the plaintiff leased to this defendant certain fish ponds situated within the jurisdiction of that municipality for the term embracing July 1, 1908, to June 30, 1909, for which this defendant agreed to pay P3,710, in quarterly installments. By virtue of this lease, the fish ponds were duly delivered into the possession of the defendant Cajuigan by the plaintiff, and he forthwith began placing therein nets, corrals, and other accessories necessary for the conduct of a fishery. The lessee failing to meet his payments as provided in the contract of lease, petitioned for and received an extension, first until October 1, 1908, and second until November 30 of the same year.

The defendant Cajuigan claims that on this last-mentioned date he tendered to the municipal treasurer the sum of P1,855, but was told to return on December 2 as he, the treasurer, was then very busy; that he returned on said date and again tendered this money, which was refused. The plaintiff denies that either of these tenders was ever made by the defendant.

The lease was declared rescinded by the municipal council on November 30, 1908, and on or about the sixth day of the following month the plaintiff, through its officials, entered the property and ejected the defendant and his tenants. Subsequently thereto and on February 15, 1910, this complaint was filed by the plaintiff, wherein judgment was asked against the defendant Pio Cajuigan as principal, and Florentino Sugui, Juan Isla, and Antero Alegado as sureties, for the sum of P3,710, together with penalties, interest, and costs. The plaintiff further asked the court to declare that the property of the sureties described in the complaint be sold to satisfy the judgment thus asked in case it was not satisfied otherwise. The defendants, after specifically denying all the allegations in paragraphs 3, 4, 5, 6, and 7 of the complaint, alleged as a special defense that the failure to pay the rents as stipulated in the lease was not due to the fault of the defendant, but to that of the plaintiff, inasmuch as the plaintiff, through its treasurer, agreed to accept on December 2 the amount then due, but that when the tender was made, said treasurer refused to comply with this agreement. The defendants asked by way of cross-complaint damages in the sum of P9,800 against the plaintiff for forcibly taking possession of the leased premises and for the value of certain nets, corrals, etc., left in the fish ponds and seized by the plaintiff.

The lower court awarded P1,855 in favor of the plaintiff, this being the amount of rent for the fish ponds for the period from July 1, 1908, to December 31, 1908, together with the penalties, legal interest, and costs of the cause. Recovery on the cross-complaint was denied.

The defendants appealed and made the following assignment of errors:

"1. The lower court erred in holding that the noncompliance with the terms of the contract in question was due to the fault or failure of Pio Cajuigan.

"2. The lower court erred in holding that defendant Pio Cajuigan did not pay the first trimonthly payment due.

"3. The lower court erred in holding that Pio Cajuigan owed P1,855, or any amount to plaintiff.

"4. The lower court erred in not giving judgment against plaintiff and in favor of defendants or of Pio Cajuigan on their cross-complaint.

"5. The lower court erred in deciding against defendants or either of them and in favor of plaintiff."

The first, second, and third assignments of error raise questions of fact and can be decided together.

The plaintiff, after presenting Exhibits A, B, C, and D, which were admitted without opposition, called Aguedo Ibarra, who, after being duly sworn, testified that he was municipal treasurer of Moncada during the year 1908 and up to May, 1909; that the lessee, Pio Cajuigan, during that time paid nothing on the lease, notwithstanding the fact that he had been requested to do so at various times and that the municipality was very anxious to collect this amount. This witness further testified that the lessee never at any time attempted or offered to pay any amount; and that he did not see the said lessee, either on the 30th of November or the 2d of December.

The first witness presented by the defense was Balbino Fabian, a subtenant of the lessee. This witness testified that he, together with Antero Alegado, one of the lessee's bondsmen, accompanied the lessee to the office of the municipal treasurer on the 30th of November and was present when the lessee offered to pay the municipal treasurer all that he, the lessee, was due to pay up to that time; that the municipal treasurer declined to receive this money, giving as an excuse that he was very busy, and told them to return on the 2d of December; that they did return on the 2d of December, the lessee carrying the money with him, and that they were then told by the treasurer that the lessee could not pay the amount due for the reason that the municipality had rescinded the lease. This witness also testified that as subtenant he had bought four hundred bamboos at P20 per hundred and made a fish corral and placed the same in the fish ponds, paying for the making of this corral P30.

Antero Alegado, the second witness, corroborated the testimony of the first witness with reference to what occurred in the municipal treasury on the 30th of November and the 2d of December.

The lessee, Pio Cajuigan, testified that not being able to pay either the first or the second quarterly payments when due, asked twice for an extension of time, which requests were granted, the last extension including the 30th of November; that on that day, the 30th of November, he, in company with Balbino Fabian and Antero Alegado, went to the municipal treasury, taking with him a sufficient amount of money to pay for both quarters; that on arriving there and saying to the treasurer that he had come for this purpose, the treasurer told him that he, the treasurer, was very busy, and for him to return on the 2d day of December; that he returned on this date and was then informed by the treasurer that he could not make the payment as the municipality had already rescinded the lease; that he never paid anything at any time on this contract except P186, which he had deposited as a guaranty of good faith before he took possession of the leased premises; that on being notified that the municipality had rescinded the lease on the 30th of November and after he had been forcibly evicted by the said municipality on or about the 6th of December, he filed a protest with the provincial board; that the provincial board notified him that his relief should be sought through the courts; that he had spent P100 in making nets, etc., which he had placed in the fish ponds; that all of these nets and other materials which he and his subtenant had placed upon the leased premises were appropriated at the time the municipality evicted him by means of force; and that it is true, according to the conditions of the lease, that if he failed to make the payments as required therein, the contract

would be rescinded and he would lose the amount deposited.

The lessee testified as to the profits which he might reasonably expect if he had continued in possession of the premises until the expiration of the time stipulated in the contract. He also called witnesses who corroborated his testimony on this point.

As to whether or not the lessee did on the 30th of November and the 2d of December try to pay the amount which he then owed, the trial court accepted as true the testimony of the municipal treasurer, and found as a fact that the lessee never did at any time offer to make any payment. This finding of fact, we think, is supported by the preponderance of the evidence. The testimony of the municipal treasurer is clear, direct, positive, and convincing. This witness, as well as the municipality, was anxious that the lessee comply with the contract and make the payments. This is shown by the fact that the municipality, at the request of the lessee, gave two extensions of time in which these payments might be made. It was to the interest of the municipality that the lessee comply with his part of the contract. On the other hand, we have the testimony of the lessee, his subtenant, and one of his bondsmen, all of whom testified that the lessee did offer the treasurer the money. If the lessee had gone there with this money on the 30th of November, the treasurer would have unquestionably accepted it, or, even if the treasurer had refused to accept it under the pretense that he was busy, the lessee could have notified the municipal president, whose office was in the same building, and demanded that the treasurer be required to accept the money. Again, when the lessee filed his protest with the provincial board against the action of the municipal council in rescinding the contract, he said nothing about his offering to pay this money on the 30th of November and on the 2d of December. If he had made such an offer, this fact would have formed the very basis of his protest filed with the provincial board. By preponderance of evidence is not necessarily meant the greater number of witnesses. (Union Pac. Ry. Co. vs. Estes, 16 Pac, 131, 134, 37 Kan., 715; Atchison, T. & S. F. Ry. Co. vs. Retford, 18 Kan., 245, 251; McCarthy vs. Birmingham, 89 N. W., 1003, 2 Neb. (Unof.), 724; San Antonio & A. P. Ry. Co. vs. Manning, 50 S. W., 177, 179, 20 Tex. Civ. App., 504; Pelitier vs. Chicago, St. P. M. & O. R. Co., 60 N. W., 250, 251, 88 Wis., 521; North Chicago St. Ry. Co. vs. Fitzgibbons, 54 N. E., 483, 180 111., 466; Turner vs. Overall, 72 S. W. 644, 649, 172 Mo., 271.)

"It is well settled that by the term 'preponderance of evidence,' is not meant the mere numerical array of witnesses, but it means the weight, credit, and value of the aggregate evidence on either side." (Coles vs. Anderson, 2 Tenn. (Lea) Rep., 14; Hills vs. Goodyear, 72 Tenn. (4 Lea), 233, 243, 40 Am. Rep., 5.)

The preponderance of evidence may be determined, under certain conditions, by the number of witnesses testifying to a particular fact or state of facts. For instance, one or two witnesses may testify to a given state of facts, and six or seven witnesses of equal candor, fairness, intelligence, and truthfulness, and equally well corroborated by all the remaining evidence, who have no greater interest in the result of the suit, testify against such state of facts. Then the preponderance of evidence is determined by the number of witnesses. (Wilcox vs. Hines, 100 Tenn. 524, 66 Am. St. Rep., 761.)

"In determining the value and credibility of evidence, the witnesses are to be weighed, not numbered." (Foulke vs. Thalmessinger, 28 N. Y. Supp., 684, 685.) A preponderance of evidence means that the testimony adduced by one side is more credible and conclusive than that of the other. (Clayton vs. Keeler, 42 N. Y., Supp., 1051, 1056; Button vs. Metcalf, 80 Wis., 193.)

The lessee, Pio Cajuigan, testified that he had not paid at any time any amount on this contract of lease except P186 which he deposited as before stated. This testimony settles the second assignment of error.

Counsel for defendants says in his printed brief that plaintiff admitted having received from the defendant P1,484. Counsel is in error on this point. He has made an unintentional mistake. It is true that according to the fifth

paragraph of the complaint as printed in the bill of exceptions the plaintiff made this admission. The fifth and sixth paragraphs of said complaint are as follows:

"5. The lessee has broken this obligation (that of paying the rent), and notwithstanding various extensions of time, has paid only P1,484.

"6. The said lessee has been requested on various occasions by the municipal treasurer to pay the remainder of the rental charges, which amounts to P2,226, but up to the date of this complaint he has not done so."

These same paragraphs, in the original complaint, which is signed by the attorney for the plaintiff, read as follows:

"5. The lessee has broken this obligation (that of paying the rent), and notwithstanding various extensions of time, has paid nothing on his obligation.

"6. The said lessee has been requested on various occasions by the municipal treasurer to pay the price of the concession, which is P3,710, but up to the date of this complaint he has not done so."

In the prayer of the complaint as it appears in the bill of exceptions, the plaintiff asks judgment against the lessee as principal and the other defendants as sureties for the sum of P2,226, together with legal interest on this amount from the first day of December, 1908, and for the costs of the cause, while in the original complaint the plaintiff asked judgment against the lessee as principal and the other defendants as sureties for the sum of P3,710, together with 20 per cent penalties, legal interest, and costs. There is no explanation in the record as to how these mistakes were made in the bill of exceptions, which was approved by the trial court. That they are mistakes can not be questioned. The case was tried upon the theory that the lessee had made no payments whatever.

In support of the fourth and fifth assignments of error, counsel for the defendants says:

"There is but one way to oust an intruder who is in peaceable possession of the property in question. That is the legal way, by means of the court. A municipal corporation has more right than a private individual to constitute itself a judge and executioner and take the law into its own hands to enforce what it believes to be a civil grievance.

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"The wrongful act of plaintiff is established beyond the peradventure of a doubt.

"It was doubly wrongful as far as the bondsmen were concerned. Even if the defendant Cajuigan were delinquent (which we in no way admit) the bondsmen would not be liable under the terms of their mortgage unless Cajuigan failed to pay by the end of June of 1909.

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"That Cajuigan has been injured by plaintiff's wrongful acts can in no sense be termed a doubtful issue. It is a certainty."

Counsel then endeavors to show that the fish ponds for the remainder of the year would have netted the lessee a profit of at least P9,500; that the lessee has been damaged in this amount; and that he, the lessee, is entitled to judgment accordingly.

In the contract of lease there are three principal conditions: First, the lessee obligated himself to pay the rents quarterly in advance, that is, on or before the tenth day of each quarter; second, if the lessee should fail to make the payments within the time specified, it was agreed that the plaintiff would be entitled to collect the same penalties as are imposed upon delinquent taxpayers; and third, if the lessee failed to make his payments during

any quarter, the contract would or could be rescinded, the defendants would be responsible to the plaintiff for all damages caused by the breach of the contract, and the lessee would forfeit his deposit.

The bondsmen guaranteed not only the payment of the P8,710, but also interest and penalties in case the lessee failed to comply with his part of the contract.

The parties knew and understood all the conditions in these contracts and were bound by them. The contracts, being legitimate ones, were the law between the contracting parties. The lessee having failed to comply with the plain provisions of his contract by not making the payments as required therein, the plaintiff had a right to have the contract rescinded, collect the penalties, and confiscate the deposit as agreed upon between the contracting parties in said contract. (Arts. 1101, 1555, Civil Code.)

If the plaintiff had gone into court and prayed for a rescission of the contract, it could have no doubt obtained not only this relief but also a judgment for the amount of the rents during the time the lessee occupied the premises, together with penalties, interest, costs, and for the forfeiture of the deposit. The plaintiff did not, however, apply to the courts for this redress, but attempted itself to rescind the contract, and did forcibly eject the lessee, who was in peaceable and quiet possession; but the lessee did not obtain nor seek a reentry of the premises. Consequently, the plaintiff must be held responsible in damages for its illegal acts in forcibly ejecting the lessee, but such damages must be limited to the simple trespass. (Smith vs. Wunderlich, 70 111, 426, wherein the following cases and authorities are cited: Case vs. Shepard, 2 Johns. Cases, 27; 1 Ld. Raym., 692; 6 Salk., 639; 2 Ld. Raym., 974; 1 Leon., 302, 319; 13 Coke, 600; Menvil's Case, 3 Blac. Com., 210; Co, Litt., 257; Holmes vs. Seely, 19 Wend., 507; Rowland vs. Rowland, 8 (Ham.) Ohio R., 40; Shields vs. Henderson, 1 Lit. (Ky.) R., 239.) The lease not expiring until months after the ouster, the lessee is not, upon the principle of the authorities above cited, entitled to recover mesne profits from the ouster to the end of his term, but the damages must be confined to the ouster itself or the simple trespass. He is, however, entitled to recover for all the necessary and natural consequences of plaintiff's illegal act, which in this case, according to the proof, amounts to P210, this being the value of the corrals, etc., placed upon the leased premises by the lessee and appropriated by the plaintiff.

The lessee was, as we have said, evicted about December 6. The trial court allowed recovery for the month of December. We think this was error. The ouster relieved the lessee from the payment of rent accruing after his possession ceased, but rent already accrued and overdue is not forfeited by the eviction. The rule that eviction suspends the payment of rent results from the meaning of the term "rent" and from the obligations of the relation between landlord and tenant. Rent is compensation for the use of land, and what the tenant pays rent for is quiet possession, or beneficial enjoyment. When, therefore, the use or possession ceases, the consideration for the payment ceases. (Grommes vs. St. Paul Trust Company, 147 111, 634, reported in 37 Am. St. Rep., 248; 1 Taylor's Land, and Ten. (eighth ed.), secs. 377, 378; 2 Wood's Landlord and Tenant (second ed.) sec. 477; 12 Am. & Eng. Ency. Law, 743; Morris vs. Tillson, 81 111., 607; Hall vs. Gould, 13 N. Y., 127; Home Life Insurance Company vs. Sherman, 46 N. Y., 370.) Consequently, the plaintiff is entitled to recover rent for five instead of six months.

The lessor and lessee agreed that in case the lessee failed to comply with the contract the lessor would be entitled to recover the same penalties as those imposed upon delinquent taxpayers, and also that the lessee would forfeit his deposit. There is nothing illegal or improper in this agreement, and there exists no reason why it should not be held valid. It was a material part of the contract, and is the law between the contracting parties.

Counsel for the defendants appears to be of the opinion that under no circumstances can a judgment be entered against the lessee's bondsmen in this case for the reason that said bondsmen obligated themselves to pay the rents in case the lessee failed to pay by the end of the term of the lease, and for the further reason that the lessee was

evicted before the said term expired. In reference to this point, it is sufficient to say that this action was not instituted until long after the full term of the lease had expired.

The judgment appealed from is hereby modified by allowing the plaintiff to recover for five months' rent, together with 20 per cent penalties thereon, and by deducting from this amount P210, the amount of the actual damages caused by the plaintiff's trespass. As thus modified, said judgment is affirmed with costs against the appellant.

Torres, Carson, and Moreland, JJ., concur.

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