

AGUSTIN J. MONTILLA, PLAINTIFF AND APPELLANT, VS. LA CORPORACION DE PP. AGUSTINOS CALZADOS DE LA PROVINCIA DEL SANTISIMO NOMBRE DE JESUS DE FILIPINAS, DEFENDANT AND APPELLANT.

G.R. No. 8404. October 09, 1913

Ponente: TORRES, J.

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TORRES, J.:

Appeals raised through bills of exceptions by counsel for both the plaintiff and the defendant corporation, from the judgment rendered on September 19, 1912, by the Honorable A. S. Crossfield, judge, in favor of the plaintiff, Agustin J. Montilla, and against the Augustinian Religious Corporation of the Philippines, sued for the sum of P9,389, with interest thereon at the rate of 6 per cent a year from November 14, 1898, and the costs of the action.

On December 15, 1911, counsel for the plaintiff filed a written complaint in the Court of First Instance of this city, alleging:

That on or about August 1, 1891, plaintiff and defendant executed a lease whereby the defendant ceded to the plaintiff the use and usufruct of the Pasay estate at an annual rent of P5,000, and at the same time authorized the lessee to collect from the tenants on said estate the arrears in rents previous to the lease, which defendant averred to be over P25,000, at a commission of 50 per cent thereof;

That on February 15, 1896, when the plaintiff was in lawful possession of said estate by virtue of the foregoing contract, he was arbitrarily and illegally dispossessed by the defendant, thereby suffering losses and damages;

That the plaintiff resorted to the courts of justice, and the defendant was sentenced by the Court of First Instance of Binondo, on May 12, 1896, to restore the plaintiff to possession of said Pasay estate, to pay the costs and damages, and to return the products and rents it had received;

That the defendant corporation appealed from that judgment, which was affirmed by the Audiencia Territorial of Manila on November 14, 1898, but as the plaintiff was absent from these Islands it was announced in open court, and up to the date of the filing of this complaint it has not been returned to the lower court for execution;

That on or about April 1, 1903, the plaintiff demanded extra judicially of the defendant corporation performance of the obligations to pay damages and to restore the products as declared in that judgment of the Audiencia of Manila, and he had to repeat his extrajudicial demands on September 24, 1903, and September 24, 1904, but although the defendant always promised to comply in a friendly way with its obligations, imposed by a final judgment, the truth is that to date it has not complied therewith, nor will it do so without a judicial decree;

That the plaintiff was entitled to possess said estate as lessee until April 12, 1897; and the losses and damages caused by the dispossession effected by the defendant corporation are herewith itemized:

(a)

Rents due from tenants for the year 1895, collectible from January to March, 1896, less the rent plaintiff owed the defendant corporation.....

P6,468.32

(b)

Rents due from tenants for the year 1896, collectible from January to March, 1897, less the rent plaintiff owed the defendant corporation.....

4,218.32

(c)

Arrears of tenants on the estate during the time of the plaintiff's lease, of the collection whereof he was deprived by the dispossession.....

4,000.00

(d)

Value of a house constructed by the plaintiff Montilla on land of the Pasay estate and left there when he was ejected from said estate.....

2,000.00

(e)

Value of furniture in said house, which was left therein when the defendant corporation again took possession of the estate.....

280.00

(f)

Costs and expenses of action for recovery, detainer and ejectment of tenants who refused to acknowledge the personality of the plaintiff Montilla, because of the dispossession he suffered.....

290.00

(g)

Commission for collection of debts previous to his lease which Montilla could and should have collected but did not, owing to the illegal acts of the defendant corporation

6,892.70

Total.....

24,149.34

That in addition to the losses and damages itemized the plaintiff has suffered others incident upon dismantling his house in Manila to remove to La Union, selling furniture and carriages at a great sacrifice and doing great injury to his credit, besides the consequences of a temporary and precarious situation in seeking new means of livelihood;

Wherefore, judgment is prayed in his favor and against the defendant corporation for the sum of P24,149.34, as losses and damages and products received, to which the defendant was sentenced by the judgment of May 12, 1896, affirmed by the Audiencia of Manila on November 14, 1898, with legal interest on said sum at the rate of 6 per cent a year from the date of said judgment, May 12, 1896, until payment and the costs.

The demurrer interposed by the defendant was overruled, whereupon it entered an exception and in reply to the foregoing complaint set forth that it generally and specifically denied each and all of the facts stated in the complaint and each and all of the paragraphs contained therein, with the sole exception of those that it expressly and with the necessary corrections admitted in special defense.

As its first special defense it alleges prescription, for the reason that long before the year 1891 and constantly since that time, without interruption, the defendant corporation has been and is a collective organization of religious character domiciled in the Philippine Islands and dedicated to the purposes of its establishment and not to commercial pursuits of any kind, as is falsely alleged in the complaint; that in order to further the purposes of its establishment the defendant possessed certain property which it managed and used therefor, among such a rural estate called the Pineda, or Pasay, estate, of its exclusive and lawful ownership; that on August 1, 1891, the plaintiff and the defendant corporation executed a contract for leasing said property for a period that should expire on December 31, 1895, and be extendible for two years more, if both parties so agreed, at the annual rent stipulated, with certain conditions, in the public instrument wherein said lease was recorded; that on the same date another contract was executed in a public instrument whereby the plaintiff undertook to attempt the collection of sums due the defendant as arrears in rents unpaid by the tenants on the estate, with a commission of so much per cent, which the plaintiff would receive from what he collected, and with the conditions stipulated in that instrument; that on December 31, 1895, the defendant considered the lease terminated and directed that in virtue thereof proclamations be issued so informing the tenants of the estate on January 16, 17, and 18, 1896, without protest or objection on plaintiff's part; that on March 23 of the same year, over two months after the publication of the proclamations, the plaintiff filed a complaint for recovery and retention of possession in the Court of First Instance of Binondo, alleging that by the publication of those proclamations the defendant had disturbed him in the possession he had enjoyed as lessee of the Pasay estate, which suit was decided on May 12, 1896, by directing that the plaintiff be immediately restored to the possession of the estate and sentencing the defendant to payment of the losses and damages caused by the dispossession; that eight days after that judgment the plaintiff was restored and protected in his possession, while the appeal entered by the defendant from that judgment was pending, and on November 14, 1898, the Audiencia Territorial of the Philippines affirmed the judgment appealed from, without special finding as to costs; that since the same was published until date it has remained final, with the force of res adjudicata, without fulfillment or execution of the finding as to losses and damages, because the plaintiff has made no effort nor urged the fulfillment and execution of that sentence; that during the time elapsed since said judgment became final up to this date the plaintiff has suffered no physical or mental incapacity that

would hinder urging execution thereof or demanding the losses and damages that he alleges were caused him in 1896, and the defendant on its part has during that lapse of time made no payment on account of said losses and damages, nor has it acknowledged in writing the existence thereof or of its obligation to pay them, nor has it entered into any agreement looking toward that end.

As second special defense, lack of right of action, for during the whole time that has elapsed since said proclamations were published the plaintiff has been able freely to urge judicially before the courts and extrajudicially outside of them the collection of the revenues or rents that he believed he ought to receive as lessee, as-well as the arrears due him for previous rents, and he has made many and large collections as a result of his efforts, without let or hindrance on any occasion by the defendant in his judicial and extra-judicial efforts for collection of such arrears in rents; that in a judgment of execution secured in July, 1896, in the Court of First Instance of Binondo, by the defendant against the plaintiff for rents collected and not delivered to the defendant, after deduction of his commission, all the share that might pertain to the plaintiff of the rents and credits was attached and the plaintiff thereby lost whatever right he might have exercised for securing to himself said rents and credits; that in an action of ejectment instituted in the same year in the Court of First Instance of Intramuros by the defendant against the plaintiff for nonfulfillment of the conditions of said contract the court decided in favor of the defendant, ordering the ejectment of the plaintiff from the estate, a judgment rendered on January 15, 1897, and executed on April 22 next thereafter, the lessee being ejected from the estate with the consequent annulment of all his rights; that the house and furniture which, according to the plaintiff, were left on the estate do not have the value or price he ascribes to them, and this property never passed into possession or ownership of the defendant corporation but was judicially attached at the instigation of the plaintiff himself to cover his debts and in that situation it was burned in 1896 by the revolutionists without intervention or possibility of hindrance on the part of the defendant; and that the costs and expenses claimed by the plaintiff as losses and damages have arisen in various suits decided before 1899, one of which has been mentioned in the special defense and its expiration already alleged, while the rest are a large number of suits for ejectment instituted by the plaintiff against tenants of the estate, whereto the defendant corporation was not a party and wherein no judgment was rendered against it.

As third special defense, *res adjudicata*, for the reason that in the said suit for detainer and recovery of possession the plaintiff secured judgment for the losses and damages which he now again claims, and there is pending solely execution of the liquidation and payment of the indemnity under consideration, and that they were not liquidated and paid is due exclusively to the fact that the plaintiff did not urge the execution of that judgment he had secured and which he in fact renounced through abandonment and neglect of his rights.

As a counterclaim the defendant corporation alleges that in said judgment of execution the plaintiff was sentenced to pay it the sum of P2,386.67 and the costs, which amounted to about P500, of which sums it only received P1,389, so there remained a balance in its favor of P1,497.67, which the plaintiff still owes and which the defendant has been unable to demand because the plaintiff left the Philippines in 1898 and did not return until two or three months ago; that in said judgment of ejectment the plaintiff was sentenced to pay to the defendant all the costs, amounting to about P1,000, nor was it possible to make demand upon him for the reason set forth; and that as the plaintiff has not complied with the terms and conditions of the said contract, mentioned in No. 4 of the special defense, he has caused the defendant losses and damages amounting to P24,000, wherefore the defendant prays that it be absolved from the foregoing complaint and that the plaintiff be sentenced to pay the sums set forth in the counterclaim, with all the costs.

In reply to the special defenses alleged by the defendant and to the counterclaim, counsel for the plaintiff denies all the facts alleged by the defendant, with the exception of what is expressly admitted in the complaint, and as a special defense against the counterclaim alleges that the rights of action, which the defendant claims to have

against the plaintiff and which it exercises in its counterclaim, has prescribed, and therefore he requests that the counterclaim be dismissed and judgment rendered in accordance with the prayer in the complaint.

After due trial and examination of the evidence submitted by the parties, the court on September 19, 1912, rendered the judgment mentioned, whereto both parties excepted and asked for a new hearing. This motion was denied by orders of the 1st and 5th of October of last year, and each party filed his respective bill of exceptions, which was approved and forwarded to the clerk of this court.

The subject matter of the action in this suit is a demand for fulfillment of an obligation declared in a final judgment.

The defendant, who was sentenced in a judgment of the Court of First Instance under date of May 12, 1896, affirmed by the Audiencia of Manila on November 14, 1898, to the payment of losses and damages and of products and rents to the plaintiff, as well as the costs, alleged as his principal exceptions to the complaint the lack of right of action and the fact that the action exercised by said plaintiff has now prescribed.

On the dates when those judgments, both of the Court of First Instance and of the Audiencia of Manila, were rendered, the Ley de Enjuiciamiento Civil was still in force. In the condition of execution of the sentence, in which the course of the case for dispossession remained arrested, the provisions of articles 394-398 of that Ley were not applicable, with reference to expiration of action by abandonment of the parties in the prosecution of the trial in the part thereof relating to the execution of a final judgment.

Article 401 of said Ley provides as follows:

"The provisions of the preceding articles shall not be applicable to the proceedings for the execution of final judgments. Such proceedings may be carried on until fulfillment of the judgment has been secured, even though it has remained arrested during the periods set forth in article 394."

These are the periods fixed for expiration of the right of action.

It is an established fact, admitted by the parties, that the plaintiff left these Islands for Spain and that the decision of the Audiencia of Manila of November 14, 1898, was announced and read in open court for and on behalf of the then absent plaintiff.

In order that this form of notification produce effects and the absentee be considered notified, it is necessary to comply with the provisions of article 267 of said procedural law, which reads thus:

"The orders and judgments announced in open court and the summonses and postponements thereof shall also be published by edicts which must be affixed to the doorways of the courtrooms where the hearings take place, such actions also being certified in the proceedings.

"The result of final judgments shall also be inserted in the official newspapers in the cases and in the manner the law prescribes. In such case a copy of the newspaper in which publication was effected shall be attached to the record."

It does not appear in the record from any certification made by the clerk of the court that the requirement of publication by edicts and in the Official Gazette of the result of said judgment was fulfilled, in order that it might have produced its effects for the absent plaintiff so as to hold him notified in due form and to make the judgment final.

In accordance with the provisions of the Ley de Enjuiciamiento Civil, which was still in force when the Audiencia of Manila in November, 1898, affirmed the judgment allotting losses and damages, the procedure indicated thereby must be followed in its execution, both for fixing the amount of the losses and damages and of the

products as well as for effecting payment thereof by levy and attachment under the following articles of said Ley, which was repealed only on October 1, 1901, by Act No. 190, entitled "Code of Civil Procedure."

Article 1643 of said Ley de Enjuiciamiento Civil says:

"The amount of the losses and damages and of the products shall be fixed by the court, without further right of appeal, by the procedure provided in article 1631.

"To make these judgments effective, after liquidation of the amount thereof, recourse shall be had to the levy and attachment established for judgments of execution."

Article 1631, cited therein, is as follows:

"If there be judgment for products or losses and damages, the value thereof shall be determined in another hearing, wherein, from the allegations of the parties and the evidence adduced, the court will determine what should be paid."

Thus, the judgment of the Court of First Instance, affirmed by the Audiencia of Manila, was not susceptible of fulfillment and execution for the reason that to be so it was necessary for the court through certain legal procedure to fix the amount of the products and the damages and losses set forth in the sentence, without which indispensable finding execution of said affirmed judgment by levy and attachment would be absolutely impossible.

True it is that the interested party, Montilla, did nothing from November 14, 1898, when the judgment of affirmation was rendered, until December 15, 1911, when he filed his complaint in the Court of First Instance; but neither did the defendant party responsible for said losses and damages do anything, although it remained in this city, while Montilla was away in Spain even before November 14, 1898, and up to a short time before he filed his complaint on December 15, 1911.

It does not appear that the notification in open court, which was made in his name and for him in the former court, was effected in due form and in accordance with the provisions of article 267 of the only code of civil procedure then in force, and consequently there is no legal reason for holding that he was notified and informed of said affirmative judgment until December 15, 1911.

In the above-quoted article 401 of the Ley de Enjuiciamiento Civil it is established that proceedings for the execution of final judgments may be carried on until their fulfillment is secured, even though they may have remained arrested during the periods fixed in article 394 with reference to expiration of the action through abandonment and lack of effort, because the provisions of the preceding articles on expiration thereof are not applicable. It is to be noted that the three terms or periods fixed in article 394 are reckoned, according to a positive provision of the law, from the last notification, and this procedure was not effected with the plaintiff in the manner prescribed by the law, and therefore he is held not to have been notified.

Aside from the foregoing, the said judgment of execution cannot be fulfilled or executed from the date when it was rendered by the Audiencia of Manila in November, 1898, until December, 1911, because it was not communicated, nor was a certified copy of it transmitted, nor was the record returned to the Court of First Instance until the 22d of the said month of December, 1911, as a result of action by the appellant Montilla, who came to this city from Spain for the purpose.

The final judgment determining the obligation of the defendant to pay the amount of the losses and damages and of the products and rents to the plaintiff was only registered in the Court of First Instance on said date, December 22, 1911, and since then the plaintiff could exercise his right to demand fulfillment of the obligation, for he was

unable to do so even when present in this city while the record with the final judgment was in the files of this Supreme Court.

Upon these assumptions and in order to elucidate whether the claim or action exercised by the plaintiff Montilla in order to secure payment of the amount of the products or rents and of the losses and damages, to which the defendant corporation was sentenced, has or has not prescribed, we will begin by quoting herewith the following articles of the Civil Code:

"ART. 1969. The time for the prescription of all kinds of actions, when there is no special provision to the contrary, shall be counted from the day on which they could have been instituted."

"ART. 1971. The period for the prescription of actions to demand the fulfillment of obligations declared in a judgment shall begin from the day the judgment became final."

In prescription of actions the only point of transcendental importance that first presents itself in proceeding to examine the character, conditions, and consequence thereof is this; Given the nature of the obligation in question, and since in all cases where the code makes no special provision for computing the periods for extinguishment by prescription, the above-quoted article 1969 of the Civil Code must be followed, and according to it the time for the prescription of all kinds of actions must be counted, in the absence of any special provision to the contrary, from the day on which they could have been instituted, this being a supplementary provision in the lack of a fixed rule for each case, from what moment must computation be made of the period fixed by law for regarding the potential right of action as extinguished?

In applying the provisions of that article for the resolution of a suit on appeal the supreme court has in its decision of May 8, 1903, laid down the following principle: "It cannot be doubted that the corresponding action for securing rights which may be immediately asserted arises from the instant when an act is performed or any contract executed that violates those rights; and this moment must be taken for beginning to count in each case the period of the prescription, when the law does not specifically provide otherwise, for the phrase employed by the legislator in said article 1969 that prescription shall be counted from the day on which such actions could have been exercised plainly refers to the legal possibility, for which purpose the situation of the individual and other circumstances alone must be taken into account, when the law so determines and designates it as an exception, which is in accordance with the scope and purpose of the prescription."

In accordance with the provision contained in said article 1969 of the Civil Code and with the principle laid down by the supreme court, from what date must computation be made of the period of prescription for the right of action accruing to Agustin Montilla for seeking fulfillment of the positive sentence for damages and losses and for restitution of rents set forth in the judgment affirmed by the Audiencia of Manila on November 14, 1898? There is no doubt that it must be counted from the time when it could have been demanded.

Agustin Montilla was at that time away from the Islands and in Spain, and the record with the judgment of affirmation remained filed in the office of the clerk of this court from the date of its promulgation up to the month of December, 1911, without any effort on the part of the parties interested to have it returned to the Court of First Instance. Such return was only effected at Montilla's request on the 22d of the said month of December, 1911, wherefore only then did the judgment of affirmation of the Audiencia of Manila become final and liable to fulfillment and execution. It was not so before, for the record was on file in the office of the clerk of the Supreme Court and the principal party interested was absent. Although it appears from the record that Montilla was notified in open court in November, 1898, still this proceeding could produce no effect at all, because the requisites established in article 267 of the Ley de Enjuiciamiento Civil had not been complied with, and it is improper to hold that such notification in open court, effected in Montilla's absence, can produce the effects of a personal

notification made to him and over his signature.

For this reason, if Montilla was not informed in proper manner of the said judgment of affirmation rendered by the Audiencia of Manila and only learned of it upon arriving in this city in December, 1911, and upon seeking, on the 15th of that month, its fulfillment by demanding payment of the amount of the losses and damages and of the products received, to which the judgment of November 14, 1898, refers, only from that time can computation be made of the period of prescription for extinguishing his right of action to demand fulfillment of said judgment and sentence, for only since his return to this city and since he acknowledged notification of said sentence of the Audiencia of Manila could he exercise his right of action for demanding payment of said damages and products owed to him. He could not make his demand in due form before said month of December, because he was absent and was ignorant of the judgment of affirmation rendered in his favor, since he had not been notified in legal form, according to the only law applicable to the case in November, 1898.

The supreme court declared in the decision cited of May 8, 1903, that the phrase employed by the legislator in article 1969 of the code for the time of prescription for extinguishment of rights of action refers plainly to the legal possibility of their being exercised, and even though the principle was laid down in connection with an action for rescission, still, in view of the terms in which it is stated, it is unquestionably applicable to the other cases that may occur.

Prescription for extinguishment of the action accruing to Montilla could not run while he was ignorant of the sentence from which his right emanated, and even though after being informed thereof he could exercise his right of action, still so long as the record was in the Supreme Court and had not been returned to the Court of First Instance, to which pertained exclusively the right to fix the amount of losses and damages and of the rents that the plaintiff ought to receive, it was also impossible for him to institute any claim, and therefore there was no day from which he must exercise his right of action to demand fulfillment of the judgment of execution.

The obligation of the defendant corporation to pay to the plaintiff Montilla the amount of the products or rents he should have received, but did not, and of the losses and damages caused him, was determined by a judgment of the court affirmed by the Audiencia of Manila on November 14, 1898, and consequently the time for prescription of the right of action begins to run after the judgment became final, according to the provisions of the above-quoted article 1971 of the code, and the sentence of the Audiencia de Manila became final in December, 1911, and not after the notification in open court effected because of the absence of the plaintiff Montilla, for the reason that said notification was not effected in accordance with the law and was a deficient and ineffective proceeding, as has been demonstrated.

The judgment of the Audiencia of Manila acquired a final character and the force of *res adjudicata* after the record was returned with a copy of that superior resolution to the Court of First Instance, with knowledge of the parties and especially of the absent Montilla, who procured its return. Since then the judgment of such higher court has become final and enforceable, and the time for prescription began to run for requiring fulfillment of the obligation therein declared, for up to that time the sentence could produce no effect, as it was not yet final; and for this reason it cannot be the basis and starting-point for prescription of the action that can be exercised until the time has come for requiring fulfillment of the obligation determined in the judgment, according to the above-quoted article 1971, which is perfectly in accord with the general rule laid down in the foregoing article 1969 of the Civil Code.

The provisions of the Civil Code, and not of the Code of Civil Procedure, have been held applicable to this case, because it is a suit instituted and terminated under the old *Ley de Enjuiciamiento Civil*, the present litigation having sprung from a claim made for fulfillment and execution of the judgment rendered in that suit for recovery

of possession.

Section 38 of Act No. 190, entitled "Code of Civil Procedure," says: "This chapter (III) shall not apply to actions already commenced. * * *"

Said suit having been commenced and terminated under the rules laid down by the former Ley de Enjuiciamiento Civil, the new procedural law cannot be applied thereto with retroactive effect; and even though the said Code of Civil Procedure went into effect on October 1, 1901, still it must be kept in mind that the decision affirming the judgment rendered in said suit did not become final until the plaintiff Montilla had been duly notified and the record with the decision had been returned to the Court of First Instance on December 22, 1911, since which date alone could its fulfillment and execution be demanded and the time for prescription of the corresponding action be computed.

An action that has for its object restitution of rents improperly received and indemnity for damages and losses declared in a final judgment partakes of the nature of a personal action, and as such prescribes by the lapse of fifteen

years counted from the day when said judgment acquired a final character and the force of *res adjudicata*, through due notification to the parties litigant. (Article 1964, in connection with articles 1969 and 1971, Civil Code.)

Even granting the force and effect of the notification of the said judgment of the Audiencia, effected in open court for and on behalf of the then absent Montilla on November 17, 1898, and regarding it as final since the 18th day of that month, and holding Montilla to be entitled since then to seek its fulfillment and execution, it is certain that when he presented his complaint or claim therefor on December 16, 1911, only thirteen years and twenty-seven days had elapsed, counting from November 18, 1898.

Therefore, even admitting that it was possible for Montilla to present his claim after November 18, 1898, despite the fact that said judgment of the Audiencia was not yet final, because he had not been notified in open court in accordance with the law, then in doing so on December 16, 1911, he exercised his right of action within the fifteen years fixed in said article 1964 of the Civil Code, and therefore the right of action exercised had not yet prescribed or expired through lapse of time.

Although it is impossible to decide exactly from the advances Montilla made in Spain to Padres Jose Lobo and Jose R. Cabeza, for the purpose of getting his claims attended to by those members of the Augustinian Corporation, that said Montilla admitted knowledge of the Audiencia's judgment of affirmation after 1902, when he began to make those advances, and even supposing that he might thus be held to have been notified of that judgment, still it cannot be denied that his claim or complaint was presented within the period of fifteen years and that the right of action he exercised on December 16, 1911, had not yet prescribed.

From the foregoing it appears that there was ground for action and that the plaintiff was entitled to demand fulfillment of the obligations declared in the said judgment rendered in the suit for dispossession and affirmed by the Audiencia of Manila.

In order to determine the amount of the annual rent which the defendant corporation received and the portion thereof that the plaintiff left uncollected, it becomes proper to state that, according to the evidence taken in the case, the rent which the tenants ought to have paid for the year 1895 amounts to 9,975.90 pesos, under contracts executed with said tenants. If the defendant corporation received 5,000 pesos of the rent of the Pasay estate for said year 1895, as proven in the case, the plaintiff failed to collect on account of rent for that year the sum of 4,975.90 pesos; which sum said plaintiff was unable to collect as a consequence of the dispossession and molestation he suffered through the defendant's fault.

Nor does it appear that the lessee Montilla received an equal amount remaining from the total revenue of the estate for the year 1896, collectible only at the beginning of or during the first quarter of the year 1897, after deduction of the 5,000 pesos, which, according to the lease, the plaintiff-lessee ought to have covered into the treasury of the lessor corporation, for by virtue of an order issued in the summary action prosecuted by said corporation the revenues or rents the lessee should have received from the tenants on the estate were attached and their collection thus prohibited; and while his restitution to possession of the leased estate in the latter part of May, 1896, was ordered by the judgment of the court, his unquestionable right as lessee being thus acknowledged, still, all the proceedings of notification to the tenants of the estate were not terminated until September of the next year, 1897, and he had been unable to collect the rents for the year 1896 during the said first quarter of 1897 because they were under attachment and affected by that summary action. It is to be noted that the action of ejectment instituted by the corporation against Montilla in August, 1896, was not decided until January 15, 1897, and he was not ejected from the estate until April 22, 1897.

It has been demonstrated by conclusive proof that the defendant corporation collected important sums paid by tenants of the estate for the year 1895 and it is just that of the amount so collected the lessee be paid the part due him, after deduction of the sum of 5,000 pesos, which belonged to the lessor corporation under the contract executed between the parties.

With reference to the revenues or rents for the year 1896, collectible only from January to March, 1897, even though the lessee Montilla could not get them because of judicial intervention and the attachment levied upon them at the instance of the complaining lessor, notwithstanding the right accruing to the plaintiff Montilla to receive said rents, still it is improper to make any determination in this litigation, but in another suit, or in the summary action wherein they were attached and wherein the interested party may present the proper claims for their collection, after removal of the attachment levied upon them.

The claimant is also entitled to collect as costs and expenses of the suit the sum of 290 pesos, acknowledged by the defendant's counsel. As for the losses and damages caused the plaintiff by said ejectment, the finding of the court is accepted to the effect that such losses and damages were especially caused by his having been hindered in collecting not only the usual rents but also the arrears contracted during the period of the lease in the months when he was deprived of the leasehold until his authority was revoked and he was removed from the property.

Taking all together the amount of the rents not received by Montilla and of the losses and damages caused him, in accordance with the declaration in the judgment of the court, affirmed by the Audiencia, with costs, it appears to reach the sum of 8,765 pesos, and this the plaintiff is entitled to receive from the defendant.

With respect to the right alleged by Montilla to collect the whole amount of the arrears from tenants during the period of the lease, which he estimates at 4,000 pesos, a right not impugned or denied by the lessor, it has not been satisfactorily proven what was the number of debtor tenants and the sums owed from 1891 to 1894, for if the sums the tenants failed to pay as rents for those four years must be discounted from the respective amounts said tenants were under obligation to pay yearly to the lessee, it still does not appear what were the amounts in which the annual rent fixed in the contract was reduced. The only definite fact resulting from the proceedings is that it was impossible for Montilla to collect them because of the ejectment described, whereby he undoubtedly suffered damage. As for the sum of 5,000 pesos for the year 1895, it appears from the record that said corporation received it entire, wherefore the plaintiff is to be credited with the remainder of the total rent, which amounts to 4,975 pesos and 90 centimos, a sum not received by said plaintiff.

In the case of the commission for collection of the arrears previous to the time of the lease, a double question with contrary claims has been raised by the parties. Plaintiff claims that the defendant corporation must pay him the

sum of 6,892.70 pesos, as the commission of 50 per cent due him and not received, because he was unable to collect such arrears at the time of the leasehold on account of illegal acts of the defendant. The latter in turn asks as a counter-claim that the plaintiff be sentenced to pay the sum of 24,000 pesos, because he did not fulfill the terms and conditions of the contract whereby the plaintiff obligated himself to attempt the collection of said arrears unpaid by the tenants of the estate before the execution of the lease, having caused the defendant losses and damages amounting to 24,000 pesos. Defendant could not at the proper time file claim for this, because the plaintiff left these Islands and did not return to them until a little while before he presented his claim for losses and damages.

After the latter part of the month of February, 1896, the collector Montilla could not have succeeded in collecting any amount of the arrears from the tenants on the Pasay estate, not only on account of the molestation and dispossession to which he was subjected in that month, but also because of the natural difficulties he necessarily encountered in collecting¹ old debts, for the payment whereof there was no fixed time or the prospect of a suit for ejectment, for such very old debts are different from the ordinary annual revenues or rents which the tenants must pay at stated periods under an obligation whose performance is guaranteed by a suit for ejectment with the payment of the consequent costs and expenses of an action in the courts, while the collection of arrears would have to be made from debtors who, when not insolvent, were rather stubborn in making payment. For these reasons it is improper and unjust to declare that the plaintiff is entitled to receive a commission at the rate of 50 per cent for collecting the sum of 25,000 pesos, which he asserts the sum total of the arrears reaches, because it is unlikely and improbable that from February to September of 1896 he could have collected all that amount.

The defendant corporation in its turn claims an indemnity for losses and damages, fixed at 24,000 pesos, for abandonment on the part of Montilla of his obligation to collect those arrears. If on the one hand the defendant saw fit expressly to revoke the authority it had conferred upon the plaintiff, according to an instrument of August 7, 1896, and on the other hand to file a suit on the 21st of the same month for ejectment of the plaintiff, who was charged with the collection of said arrears until he was removed from the estate on April 22, 1897, and also at its instance in a summary action the property and revenues the lessee Montilla was to have received from the tenants on the estate were attached, a proceeding effected on September 30, 1896, there can be no doubt that by all these proceedings the plaintiff was left in the situation of being unable to fulfill his agreement after February, 1896, when he was disturbed and removed from possession and enjoyment of the lease of the estate and of the right to collect the arrears and ordinary rents the tenants owed.

If it is wholly impossible to accept the plaintiff's theory that he was hindered from making collection of either of these revenues through illegal acts of the defendant after February, 1896, and thus is entitled to the commission which he ought to have received on collecting all the arrears in question, the defendant's theory is also inadmissible in law that as the plaintiff had abandoned his attempts at collection he owed it 24,000 pesos as losses and damages, because the collector could not discharge his duty for the reasons stated. Both claims are improper and illegal.

Furthermore, it appears that the action instituted by the defendant in counterclaim for the payment of said 24,000 pesos against the plaintiff for the reasons above set forth, prescribed on February 10, 1912, for when the authority the defendant corporation conferred on Montilla on August 7, 1896, was revoked on the next day, the 8th of the same month, or at the very latest the 22d of the same month wherein the suit for ejectment was filed against Montilla, said corporation could and ought to have instituted the corresponding action claiming payment of the said sum of 24,000 pesos which it claims as indemnity for losses and damages caused by abandonment on Montilla's part of the obligation to collect arrears from the tenants of the estate.

So, to claim that indemnity, recourse has been had for the first time through a counterclaim to a personal action

emanating from an agreement or contract in writing, which is clearly subject to the Code of Civil Procedure in force since October 1, 1901; nor can article 1964 of the Civil Code be invoked, since it is not a question of an action exercised in a suit already commenced before the promulgation of that code of procedure.' The counterclaim was only filed on February 10, 1912, when the right of action for claiming such indemnity had already expired on October 2, 1911, according to the provisions of section 43, No. 1, in connection with section 38 of the Code of Civil Procedure, as the period of ten years had elapsed from the promulgation of that code on October 1, 1901.

It is likewise demanded in a counterclaim that the plaintiff be sentenced to payment of the sum of a thousand pesos, the approximate amount of all the costs of the suit for ejectment. The defendant corporation instituted this suit against Montilla on August 21, 1896, for violation of the lease in the part referring to the gradual increase of the bond for guaranteeing: it, and this suit was finally decided on January 15, 1897, and he was ejected from the property on April 22 of the same year.

From January 16, 1897, to February 10, 1912, when the counterclaim was presented for said sum of a thousand pesos, the period of fifteen years, within which the right of action to demand it could and ought to have been exercised, had more than elapsed. This right of action is of a personal nature and prescribed in accordance with article 1964 of the code, when the judgment became final on January 15, 1897, according to the provisions of article 1971 of that code, which says: "The period for the prescription of actions to demand the fulfillment of obligations declared in a judgment shall begin from the day the judgment became final."

It is, therefore, for the causes and reasons set forth, improper in law to sentence Montilla under a counterclaim for payment of the sums of 24,000 and 1,000 pesos, claimed respectively by the defendant in its second and third grounds of action exercised therein.

The correctness or incorrectness of the attachment of the house and furniture of the plaintiff as a result of the suit for ejectment, judgment wherein became final, cannot be discussed in this litigation.

With respect to the first cause of action relating to the amount which, as principal, interest, and costs, Agustin Montilla has been sentenced in a final judgment rendered in the summary action instituted by the Augustinian Corporation, it must be stated here that on February 10, 1912, when the right of action was exercised through a counter-claim for payment of the sums the defeated Montilla owed to the winning party, said right of action had not yet prescribed, for final judgment was rendered on November 23, 1896, and affirmed on October 4, 1897, by a judgment rendered by the Audiencia of Manila, in virtue of an appeal raised by the defeated Montilla. Wherefore, in accordance with articles 1969 and 1971 of the Civil Code the right of action exercised in a counterclaim by the winning defendant could have been exercised from February 5, 1897, and it was done on February 10, 1912, when only fourteen years four months and four days had elapsed, and therefore the said counterclaim based on the first of the causes of action alleged in its reply was filed in time and within the period of fifteen years fixed by article 1964 of the Civil Code.

In the final judgment dated November 23, 1896, rendered in the executory actions instituted by the Augustinians against Montilla, exhibited at the hearing in this case, execution was ordered to proceed for the sum of 2,386 pesos 67 centimos and 3 octavos, and legal interest at 6 per cent a year from May 16, 1894 (pp. 154 to 170). On page 182 of the orders of execution there is certified a note for the sum of 1,389 pesos, placed in the safe on November 4, 1895, which would have fallen due on the same day and month in 1896. This sum was deposited voluntarily in coin with interest at 5 per cent a year and was indorsed to the order of the procurator of the convent of the Augustinian Order on August 13, 1896.

By order of July 28, 1898, at the petition of the winning party, the attachment granted therein on the sum of 1,389

pesos, entered in said note with interest due, was extended (p. 204 of said orders).

At the petition of the same winning party, by order of December 26, 1898, the sum of 1,389 pesos with interest due on the capital stated in said note, attached as a result of the said summary action in payment of a part of the debt that was the subject matter of the suit, was adjudicated to the Augustinian Order (p. 212).

For the purpose of determining exactly the amount of the counterclaim based on said first cause of action, an amount owed by the defeated Mbntilla, it is indispensable to show the responsibility alleged, as follows:

Principal subject to execution.....

P2,386.67

Interest at 6 per cent from May 16, 1894, to December 26, 1898

660.31

Total

3,046.98

Computation of interest at 6 per cent on the principal due is made up to December 26, 1898, for the reason that on such date the value of the note, P1,389, was adjudicated to the prevailing creditor.

In adjudicating this sum with interest thereon to the Augustinian Corporation no statement was made of the amount of interest at 5 per cent that had been duly computed, under the fifteenth section of the lease, that is, whether in the annual renewal of the deposit the interest due for each year would be added to the principal and compounded interest, which was to be placed or again deposited in the general treasury.

So, after computation of the interest accrued at the rate of 5 per cent a year on the principal represented by said note for 1,389 pesos Mexican, from November 4, 1895, to December 26, 1898—that is, three years one month and nineteen days—with interest compounded each year, according to agreement, it appears that said principal produced P229,84 7/8; wherefore the computation of the principal stated in said note and interest thereon gives a total sum of 1,618 pesos 84 centimos and 7 octavos, in payment of 3,046 pesos and 98 centimos, the amount of the debt and interest that were the subject matter of that summary action.

This latter sum of 3,046 pesos and 98 centimos of debt was partly covered by the 1,618 pesos 84 centimos and 7 octavos of principal and interest in said note, so there still remained as debt the balance of 1,428 pesos 13 centimos and 1 octavo, which appears to have been more than paid by the sum of 3,881 pesos and 52 centimos collected by the depositary as rents for the year 1896, in the months of June, September, and December, 1897, and May, 1898, which all admit was the result of the summary action, without express statement of the amount of the costs, because they were not duly computed and assessed.

Article 1196 of the Civil Code prescribes:

"In order that compensation may be proper, it is required:

"1. That each of the persons bound shall be so principally, and that he be at the same time the principal creditor of the other.

"2. That both debts consist of a sum of money or, when the things due are perishable, that they be of the same

kind and also of the same quality, if the latter should have been stipulated.

"3. That both debts be due.

"4. That they be determined and determinable."

Having thus demonstrated in a conclusive manner that the whole debt of the summary action and of the counter-claim, based on the first cause of action, was more than paid in 1898, even before the adjudication of the amount in said note and the interest due thereon, for of the amount collected as rents and attached in 1898 the sum of 2,453 pesos and 38 centimos and 7 octavos still remained, it is improper to oblige the losing party to pay the same or to declare "compensation" [offset] therefor proper, because no debt exists on the part of the loser Montilla that can be "compensated" by the sum owed and due him from the defendant corporation.

With respect to interest on the sum of 8,765 pesos declared in plaintiff's favor, in our opinion payment only of legal interest at 6 per cent is proper, from the date of the judgment appealed from on September 19, 1912, because it is not a question of a sum computed and owed by virtue of a sentence rendered in the suit for recovery, for if the same had been executed in accordance with the former Ley de Enjuiciamiento Civil it would have been necessary to take evidence on the importance and amount of the rents and of the losses and damages caused and it would have been necessary to render a final decision, the court fixing, without further right of appeal, the definite sums that the party sentenced must pay. (Articles 1631 and 1643, Ley de Enjuiciamiento Civil.)

What was not then done, was done in the judgment on appeal fixing the amounts for which the defendant was responsible, for until they are computed and so declared in a final judgment, the defendant cannot be regarded as delinquent in the fulfillment of his obligation to pay the debt with interest. (Decisions of November 19, 1869; February 27, 1901; and July 13, 1904; rendered by the supreme court of Spain on appeal with reference to the construction and application of article 1108 of the civil code of that country, almost identical with the one in force in these Islands.)

For the foregoing reasons, whereby the errors assigned by both parties to the judgment appealed from are deemed refuted, and affirming that judgment in so far as it is in accord herewith, the defendant corporation is sentenced to pay to the plaintiff Montilla the sum of P8,765, with legal interest at 6 per cent a year from September 19, 1912, the date of the judgment of the court, and the costs, without prejudice to the plaintiff's right to claim from defendant the portion of rents for the year 1896 that belong to him and were attached at the latter's request in said summary action. Said plaintiff is absolved from the counterclaim filed by defendant on the second and third grounds of action; and it is declared to be improper to decree in this judgment "compensation" [offset] for the sums the plaintiff Montilla is alleged to owe the defendant Augustinian Corporation, and that which the latter must make to him under this decision, for the reason that, as stated above, it has already been paid, the counterclaim being thus dismissed on the first ground of action. So ordered.

Mapa and Johnson, JJ., concur.

Carson, J., concurs in the result.

Moreland and Trent, JJ., dissent.

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