

[G.R. No. 100. September 09, 1901]

AGUSTIN ASENCIO, PLAINTIFF AND APPELLANT, VS. FRANCISCO GUTIERREZ, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

It has been plainly proven that at the time this declarative action was initiated the defendant resided at Manila, P. I. He left Iloilo with his family November 19, 1898, and his family has never since returned to Iloilo. The defendant was at this latter place from February 17, 1899, until March 16 of the same year with the object, as alleged by him, of recovering the possession of his printing machine, which the American authorities refused to deliver. With this exception the defendant and family have resided permanently at Manila since they left Iloilo in November, 1898.

On April 1, 1899, a registration certificate was issued to him as a resident citizen of Manila. On January 1, 1900, his name was registered in the books of the Internal-Revenue Collector as a resident of Manila. On April 11, 1900, he presented a declaration to the Spanish consulate under article 9 of the treaty of Park, in which he also stated that he was a resident of Manila. The plaintiff alleges in his complaint that the defendant is a resident of Manila; he also affirms this in his petition of November 20, 1900. It appears from the foregoing facts that it was the deliberate intention of the defendant to change his place of residence.

No law has been cited, in force in these Islands, which requires citizens to announce their intention of changing their residence in a more public manner.

It is expressly alleged in the complaint that the original lease expired on the 1st of April, 1899. The right alleged by the plaintiff in his complaint is based exclusively upon two facts. The first is, that after the aforesaid lease had expired and after all rent due thereunder had been paid according to the terms thereof, the printing machine, the property of the defendant, still remained in the basement of the house, which basement was only a part of

the house described in the original contract of lease. The plaintiff in his complaint admits that the upper floor of the house was in use by him at the time he presented the complaint. The second is that a letter was written to the defendant May 17, 1899, advising him that the rent of the premises would be 150 pesos until the time the printing machine was removed from the building. The defendant did not answer this letter, but receipted for it at the post-office, as the letter was registered.

This action has been instituted with the object of collecting rent at the rate of 150 pesos per month from May 1, 1899, to the same month in 1900. The only question arising is this; Should this case be decided at Iloilo, where it originated, or at Manila? If there was a contract in this case it related only to the ground floor of the building and arises from the presence of the printing machine therein and from the letter of the plaintiff dated May 17, 1899. It was not stipulated in this letter where the payment should be made. In accordance with article 1574 of the Civil Code, article 1171 of the same Code is applicable, and the place of residence of the debtor is the place of payment. This personal action is, as affirmed by the plaintiff himself in his complaint, entirely distinct from and independent of an action of forcible entry and detainer. The rules which regulate the jurisdiction in such actions are not applicable to this case, which is governed by article 46, rule 1, of the Law of Civil Procedure now in force.

The order appealed from the Court of First Instance of Iloilo is in accordance with law and must be affirmed with the costs against the appellant. It is so ordered.

Arellano, C. J., Torres, Cooper, Mapa, and Ladd, JJ., concur.