

[G.R. No. 417. February 17, 1902]

**FELICIANA DE GUZMAN, PLAINTIFF AND APPELLANT, VS. MIGUEL FABIE,
DEFENDANT AND APPELLEE.**

D E C I S I O N

LADD, J.:

This is an appeal from the judgment given in favor of the defendant by the Court of First Instance of Manila in the action of interdiction instituted for the purpose of retaining the possession of the half story and to recover the possession of the upper story of the same house.

It appears that the plaintiff lived in the house as a servant of the owner, one Tiburcia Ortiz, at the time of the death of the latter, which occurred on December 22, 1899. After the death of Doña Tiburcia the plaintiff continued in the house, occupying the upper floor of the same for some time and later having removed to the half story. The record is silent concerning the circumstances under which she changed to the half story, save that she did so in order that certain relatives of Doña Tiburcia might temporarily occupy the rooms of the upper story. When they ceased to occupy these rooms, and, as it appears, while the plaintiff still lived in the half story, the defendant rented the rooms to other parties. This is the ouster on which the plaintiff bases her claim that she be again placed in the possession of said rooms. It likewise appears that the defendant, asserting his right as owner of the house, demanded of the plaintiff, through the medium of a notary, that she vacate the half story. The plaintiff contends that this implies such disturbance in her possession of the half story that it gives her the right to be protected in such possession by the law. The defendant, after having made this notarial demand, commenced an action of eviction, which was decided in his favor. (See *Fabie vs. Guzman, supra*).

The plaintiff contended that the property belonged to her as legatee of Doña Tiburcia under a will executed in 1889, no legal proof of the same having been presented, however. The

defendant claimed ownership as universal heir of Doffa Tiburcia under a will executed September 10, 1896, having proved that the registry of said will in the protocol had been ordered by competent authority.

We shall not consider the question of whether the plaintiff was ever in such possession of the property that she might maintain an action of interdiction. Nor shall we consider the question, also argued by the attorneys of the parties, whether the two interdicts to retain and to recover possession may be consolidated in one single action as the plaintiff has sought to do. We are of the opinion that the decision of the lower court is perfectly correct, based upon other grounds.

Whatever the possession of the plaintiff may have been with reference to the apartments of the upper floor after the death of Dona Tiburcia, there is nothing in the record which indicates, and nothing from which it might be justly inferred, that the defendant has ousted her of said possession or that she has lost the same either directly or indirectly by reason of any act committed by him. It appears that she vacated these rooms voluntarily and did not again acquire the possession thus abandoned prior to the date on which the defendant introduced his tenants. When the act was performed which she classifies as ouster in her complaint, the plaintiff did not hold any possession of which she could be ousted, and the action, considered as an interdict to recover possession, can not, therefore, be sustained.

It is apparent that the action, viewed as an interdict to retain possession of the half story, can not be sustained either. The object of these interdicts is to prevent parties from dispensing justice for themselves, and not to place obstacles in their use of the ordinary legal processes. The notice to vacate given to the plaintiff was merely the first and necessary step given by the defendant in the defense, by the means which the law placed at his disposal, of that which he believed to be his right to the possession of the premises. It makes no difference whether or not he had a right to the possession. He had the right to have the court pass judgment upon his claim, and therefore he had also the right to establish the grounds for the action which he intended to commence by giving notice to vacate. The notice can not be considered as an act which manifests the intention to disturb the plaintiff in her possession or oust her from the same within the meaning of article 1633 of the Code of Civil Procedure.

The plaintiff contends that the trial held before the lower court should have been stayed until the determination of an action filed by her against the defendant for the production of the will which is said to have been executed by Doiia Tiburcia in 1809, as well as the

determination of a complaint which she is said to have filed against the defendant for the falsification of the will in virtue of which he was claiming the ownership of the house. With reference to this point it suffices to state that, as appears from the record, the plaintiff filed in the lower court an incidental motion, and finally withdrew the same in express terms and prayed the court to give its judgment.

No error having been committed in the judgment appealed from, the same should be affirmed with costs taxed against the appellant. It is so ordered.

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

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