

5 Phil. 219

[ G.R. No. 2297. November 07, 1905 ]

**CONSTANCIO JOAQUIN, ADMINISTRATOR OF THE ESTATE OF TEODORO PATRICIO, PLAINTIFF AND APPELLANT, VS. MANUEL G. ESPINOSA, DEFENDANT AND APPELLEE.**

## **D E C I S I O N**

### **WILLARD, J.:**

The contract between the deceased, Teodoro Patricio and the defendant, which gave the latter the right to occupy the house in question, was made on the 19th day of April, 1902, after the present Code of Civil Procedure went into effect. The lease was for the term of five years from, the date of the said contract and the rent was 12 pesos a month, payable in advance in money that was legal tender.

The plaintiff brought this action in the court of a justice of the peace on the 9th of February, 1904, asking that he be given possession of the premises, and that the defendant be required to pay the rent due, and damages. He based his right to recover upon the fact that the defendant had not paid the rent for January and February, 1904; neither had he paid 10 pesos corresponding to the months of October, November, and December, 1903, which money he was required to pay by the terms of his contract, on account of city water and other expenses of that character. There is no evidence to show that the 10 pesos due for those months had not been paid. The witnesses in the case all spoke of the rent for January. Under the terms of the contract the defendant was required to pay on the 19th day of December, 1903, the rent for the month commencing on that day and ending on the 19th day of January, 1904, and on this last date, he was required to pay the rent for the month commencing on that day and ending on the 19th day of February,

1904. There is nothing in the case to show that the defendant did not pay on the 19th day of December the rent then due. There is proof that the rent payable on the 19th day of January was not actually received on that day by the plaintiff. There is a conflict in the evidence as to the reason why this rent was not then received by the plaintiff. The plaintiff's only witness testified that the defendant refused to pay because he did not have the money. Three witnesses for the defendant testified that the money was offered to the collector of the plaintiff in Mexican currency, and he declined to receive it on the ground that it should be paid in Philippine currency. The court below decided this question of fact in favor of the defendant, and we think the preponderance of the evidence is in favor of that finding. The proviso to section 3 of the act of Congress of March 2, 1903, gave the defendant the right to pay this debt in Mexican currency, and it was the duty of the plaintiff to receive that currency.

The only jurisdiction which the justice of the peace had in this case was given to him by section 80 of the Code of Civil Procedure now in force. By the terms of that section the plaintiff can not recover in a case of this kind unless he has made a demand for the payment of the rent after it becomes due, that demand has been refused, and thirty days have elapsed since such demand and refusal. The present case does not come within the terms of the section for two reasons: In the first place, the demand for the rent due on the 19th day of January was not refused, but an offer of payment was duly made. In the second place, thirty days had not elapsed between the time when the demand was made and the time when the action was commenced. The judgment of the court below refusing to grant the plaintiff the possession of the premises was therefore correct.

In view of the fact that the plaintiff was in no event entitled to maintain the action, we do not think there was any error in the order of the court below prejudicial to the plaintiff, directing the clerk of the court to pay over to him 123 pesos—the amount of rent deposited by the defendant in court. The amount due at the date of the judgment from the defendant to the plaintiff under the evidence in the case was no greater.

Therefore the judgment of the court below is affirmed, with the costs of this instance against the appellant, and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below for execution of said judgment. So ordered.

*Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.*

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