Forcible Entry and Detainer

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THE sack of Manila and other cities by the Japanese forces and the consequent destruction of thousands of buildings prompted the institution of numerous forcible entry and detainer actions, a number of which were elevated to the Supreme Court on appeal or on certiorari. The following is a topical digest of the leading decisions rendered in those actions.

Liberal interpretation of the rule

"Cases of forcible entry and detainer are summary in nature, for they involve perturbation of social order which must be restored as promptly as possible and, accordingly, technicalities or details of procedure which may cause unnecessary delays should carefully be avoided. And these cases are to be tried and decided by justice of the peace or municipal courts who are in close contact with the masses. Simple and practical methods of procedure should be afforded these masses so that they may not fail through their ignorance in obtaining a just redress for their grievances. Poor and ignorant people living in distant barrios and towns and peacefully enjoying their small pieces of land and homes, may be driven out of their property and deprived thus of the necessaries of life by unscrupulous and violent individuals, and they may come for protection to the courts of the town completely unaided either because there are no lawyers in the locality or because they have no means to employ the services of such lawyers. By the quality of attention which they may receive in said courts will they learn whether this government is also their own or only of the powerful, rich or intellectual."[1]

"In interpreting section 8 of Rule 72 (of the Rules of Court), we must not stick to the simple and lifeless mechanics of alphabet and syntax, or vocabulary and grammar, not even to routinary hermeneutics or formal semantics, but with bread and farsighting statesmanship adopt a liberal judicial attitude, always in painstaking search of the truth that will satisfy our reason, and imbue the rule provisions with healthy pulsating vitality, in complete synchronization with the rhythm of human life and evolutionary development ,taking into consideration the following: (a) the spirit pervading the Rules of Court as expressed in section 2 of Rule 1, (which provides for the liberal construction of the rules in order to promote their object and to assist the parties in obtaining just, speedy, and inexpensive determination of every action and proceeding); (b) the fact that section 8 of Rule 72 places defendants in ejectment cases under harder conditions than those of the defendants in all other cases calls more imperatively for liberal interprtation; (c) the acute dearth of housing, created by the ravages of the recent global war in all theaters of battle, such as the Philipines, placing tenants in even harder situation than what they had faced before the war; (d) the dominant trend of legislative thought, prone to relieve tenants from their pitiful con-

1 Co Tiamco v. Diaz et al, SC-G. R. No. L-7 January 22, 1946 holding a complaint, which is almost a verbatim copy of Form No. 1 of the Rules of Court and fails to allege demand as required by rule 72 section 2, as sufficient to institute a detainer action based on expiration of the term of the lease. The Court further said that "in solving procedural problems, the progressive and liberal spirt of the reform should be our beacon light."

ditions, as evidenced by a recent enactment of our Congress."[2]

But acute housing conditions cannot sanction dilatory tactics. "Este Tribunal tiene conocimiento de la actual crisis de viviendas. No es insensible a las palpitaciones del sentimiento publico. Pero, en materia de procedimientos no puede sancionar ningun principio que solo tenga por objeto demorar injustificadamente o frustrar los intereses de la justicia."[3]

And acute housing conditions cannot justify the stay of execution of a judgment of ejection based on compromise of the parties. "We can not be unmindful of the hardships of tenants in Manila under present circumstances and we are willing to grant said tenants, who might come to us for relief, any liberal concession compatible with law. But we revolt against the idea of being a party to a violation of a gentleman's agreement, and of trampling upon the word of honor of honorable citizens. We can not countenance the breach of a voluntary promise given with all the judicial and gentlemanly solemnities by petitioner in the present case."[4]

Lastly, the contention that in view of the post-war housing conditions in Manila no ejectment should be ordered, has no legal basis and cannot be sustained.[5] No specific legal ground has been pointed out which would justify the Court in disregarding the law applicable to the facts of the case "The magic words 'social justice' are not a shibboleth which courts may readily avail of as a shield for shirking their responsibility in the application of the law."[6]

Tests in determining jurisdiction of inferior courts over forcible entry and detainer actions

"We have repeatedly held that in determining whether an action of this kind (forcible entry and detainer) is within the original jurisdiction of the municipal court or of the court of first instance, the averments of the complaint and the character of the relief sought are primarily to be consulted; that the defendant in such an action cannot defeat the jurisdiction of the justice of the peace or municipal court by setting up title in himself; and that the fact which defeats the jurisdiction of said court is the necessity to adjudicate the question of title."[7] Thus, where there is no dispute as to the title to or the respective interests of the parties in the property in question and the only question between the plaintiff and the intervenor is, 'who has the right to manage or administer the property, i.e., to select the tenant and to fix the amount of rent, the action is purely possessory and not one in any way involving the title to the property and is within the original jurisdiction of the inferior court."[8]

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2 Mitschiener v. Barrios et al, SC-G. R. No. L-112 February 1. 1946 holding that the deposit of back rents takes the place of a supersedeas bond and stays the execution of the judgment of ejection. In Tolentino v. Court of First Instance of Manila et al, SC-G. R. No. L-32 October 18, 1945, the Supreme Court sustained the power of the judge of first instance to permit the appellant in forcible entry and detainer cases to present the supersedeas bond which he had failed to submit to the justice of the peace court and said that the attitude of the respondent judge perfectly dovetails the injunction to construe the rules liberally.

3 De la Fuente et al v. Borromeo, SC-G. R. No. L-131 March 30, 1946 holding that the lower court did not abuse its discretion in denying the defendant's motion for postponement supported by an unsworn medical certificate of sickness.

4 De la Cruz et al. v. Roxas et al, SC-G. R. L-100 November 16, 1945.

5 Estrella et al. v. Sangalang, SC-G. R. No. L-65 February 6, 1946; Phil. Sugar Estates Development Co. Ltd. v. Prudencio, SC-G. R. No. L-75 February 6, 1946; Domingo Vda. de Buhay v. Cobarrubias, SC-G. R. No. L-43 February 27, 1946.

6 Phil. Sugar Development Co. Ltd. v. Prudencio, *supra*.

7 Fabie v. Gutierrez David et al, SC-G. R. No. L-123 December 12, 1945 citing Mediran v. Villanueva, 37 Phil. 752, 759; Medel v. Militante, 41 Phil. 526, 529; Sevilla v. Tolentino, 51 Phil. 333; Supia and Batioco v. Quintero and Ayala v. Cabrera and Flameno, G. R. No. 49129.

8 Fabie v. Gutierrez David et al, *supra*.

When the inferior court dismisses the action upon the ground of lack of jurisdiction and an appeal taken to the court of first instance, the only question to be determined is whether or not the inferior court has jurisdiction to try the case on the merits.[9] If the court of first instance should decide that the inferior court had jurisdiction to try the case, it should remand the same to said court for trial on the merits.[10]

When the court of first instance dismisses the action upon the ground of lack of jurisdiction, certiorari and mandamus lie to annul the order of dismissal and to require the said court of first instance to try and decide the appeal on the merits. Taking into consideration that the law requires that an unlawful detainer case be promptly decided, it is evident that an appeal from the order of dismissal would not be a speedy and adequate remedy.[1]

Necessity of demand contemplated by rule 72 section 2.

In Co Tiamco v. Diaz et al, *supra.*, the majority opinion held that a demand is a pre-requisite to an action for unlawful detainer, when the action is "for failure to pay rent due or to comply with the conditions of his lease" (rule 72 sec. 2), and not where the action is to terminate the lease because of the expiration of its term. This is held to be in conformity with articles 1565 and 1581 of the Civil Code. A lease ceases upon the expiration of its term without the necessity of any notice to the tenant who thenceforth becomes a deforciant withholding the property unlawfully "after the expiration or termination of the right to hold possession by virtue of any contract, express or implied," as provided in Rule 72, section 1. In other words, upon the expiration of the term of a lease, the landlord may go into the property and occupy it, and if the lessee refuses to vacate the premises, an action for unlawful detainer may immediately be brought against him even before the expiration of the fifteen or five days provided in Rule 72, section 2.

The majority opinion admitted that, upon the expiration of the lease, there may be a tacit renewal thereof (tacita reconduccion), as when, with the acquiescence of the lessor, the lessee continues enjoying the thing leased for fifteen days, as provided in article 1566 of the Civil Code; and the lessor's acquiescence may be inferred from his failure to serve a notice to quit (10 Manresa, Codigo Civil 619). But it held that tacit renewal in such case, being a new contract (10 Manresa, id. 619), is a matter of defense which may be alleged by defendant in his answer, no allegation being necessary in the complaint by way of anticipation of each defense.

The minority opinion took the position that, in all actions for unlawful detainer by a landlord against a tenant, a demand or notice to quit is jurisdictional. The minority opinion relied on the theretofore well-settled premises that the inferior court is a court of special and limited jurisdiction, that there is no presumption of jurisdiction in courts of limited or special jurisdiction, that all facts essential to its jurisdiction must be alleged in the complaint, that notice to quit is the expression of the purpose and intention of the landlord to terminate the lease, that without notice to quit the tenant's possession does not become illegal, and that therefore notice to quit is a jurisdictional fact.

Complaint for ejectment, sufficiency of:

9 Mirano v. Diaz, SC-G. R. No. L-56 November 10, 1945 citing rule 40, sec. 10, Rules of Court; United States v. Ang Suyco, 17 Phil. 92; Carrol v. Paredes, 17 Phil. 96; Davis v. Director, 17 Phil. 168; United States v. Bernardo, 19 Phil. 265.

10 Mirano v. Diaz, *supra*, citing Lucida v. Vita, 25 Phil. 414.

1 Fabie v. Gutierrez David et al, *supra*.

The form as provided in the Rules of Court is as follows:

"Form 1.—COMPLAINT FOR EJECTMENT

"Plaintiff alleges that defendant has unlawfully turned him out of possession (or unlawfully witholds from him the posession, as the case may be) of certain lands and building (here describe the premises), situated in the municipality of ....

"Wherefore, he prays that he be restored to the possession of said premises, with damages and costs."

Substantial compliance with this form is sufficient according to the Rules. A literal compiance with this form is also sufficient, so the majority opinion in Co Tiamco v. Diaz et al, *supra.*, held: A form provided by law is a part of that law and, as such, it must be respected, regardless of what we might desire as to how it should be. The form provided by the rules is not a figment of the mind but a practical expression of a fundamental policy. It discloses that in an action for forcible entry a simple allegation in the complaint that defendant turned the plaintiff out of possession is sufficient, for, undoubtedly, the words "turned out" imply force in the taking of the possession.[2] And in an action for unlawful detainer, a simple allegation that defendant is unlawfully withholding possession from plaintiff is sufficent; for words "unlawfully witholding" imply possession on the part of the defendant, which was legal in the beginning having no other source than a contract, express or implied, possession which has later expired as a right and is being withheld by defendant. Thus, a form of a pleading is devised which is brief and concise, and though apparently too general, it is so worded as clearly to apprise the defendant of the substance of the claim. Other details like the one-year period within which the action should be brought, and the demand when required to be made by the Rules, must be proved but need not be alleged in the complaint.

Damages in ejectment cases

As to damages in ejectment cases there are none practically to be adjudicated except the loss of rents or of their equivalent. It has already been declared that the only damages recoverable for illegal detainer are reasonable compensation for use and occupancy of the premises, even in cases of usurpation.[3] In an action of forcible entry and detainer the damages consist in a reasonable compensation for the wrongful use and occupation of the premises, the legal measure of damages being the fair rental value of the property.[4] The measure of damages for forcible entry and unlawful detention of property, whether by a mere intruder or a lessee by contract not fixing the rent, is the same, namely, the reasonable value of the use and occupation.[5] Ordinarily, the amount allowed as damages may be presumed to be the reasonable value of the use of the land as fixed by the court.[6] Damages may be recovered for the annual yield of the palms on the land, but not for the value of the palm trees cut down.[7]

Undoubtedly, these pronouncements of the Supreme Court were taken into consideration by the authors of the Rules of Court when, although in section 1 of Rule 72, plaintiff is authorized to sue for the restitution of possession "together with damages", in drafting section 6 of Rule 72, as to judgment to be pronounced, the word

2 Mediran v. Villanueva, 37 Phil. 752, 756.
3 Veloso v. Ang Seng Teng, 2 Phil. 622.
4 Sparrevohn v. Fisher, 2 Phil. 676.
5 Igama v. Soria, 42 Phil. 11.
6 De Castro v. Justice of the Peace, 33 Phil. 595.
7 Santos v. Santiago, 38 Phil. 575.

"damages" was eliminated, placing, in lieu thereof, the words "reasonable compensation for the use and occupation of the premises." That is, in an ejectment case, plaintiff may recover either rents or the reasonable compensation for the use and occupation of the premises, loosely designated in section 1 and 8 of Rule 72 as "damages", which may be designated also as "fair rental value of the property" When rents are adjudged no reasonable compensation for the use and occupation of the property can be adjudicated, while, inversely, when reasonable compensation is adjudged it is because no rents are adjudicated.[8]

Immediate execution of judgment. How to stay the same

Ordinarily, under section 8 of Rule 72 of the Rules of Court, the winning plaintiff in an ejectment case is entitled to move for immediate execution—the court is bound to grant the same,—unless the defendant, who has appealed from the decision of the justice of the peace or municipal court, files a supersedeas bond and, during the pendency of the appeal, pays to the plaintiff or to the court the rents due from time to time.[9] The plaintiff may however waive the right to immediate execution; and he waives such right when he, after the defendant had already failed to pay the rents that fell due after the decision of the justice of the peace court, had on two occasions agreed to suspend execution upon the mere filing by the defendant of a cash bond for ₱1,000.00, first in 1944 (Japanese notes) and, then, in 1945 (Philippine currency).[10]

A writ of execution may only be issued by the court in ejectment cases after notice to the adverse party.[1] Upon the perfection of the appeal by the defendants in the ejectment proceedings, the court loses jurisdiction to issue a writ of execution.[2] And, after the judgment of the inferior court had been superseded by the judgment of the court of the first instance, the latter could not order the execution of said judgment of the inferior court which had become *junctus oficio*.[3]

Under section 2 of Rule 40, an appeal from a judgment rendered by a municipal court to a court of first instance shall be perfected within fifteen days after notification to the party of the judgment appealed from. (a) by filing a notice of appeal; (b) by depositing the appellate court docket fee; and (c) by giving a bond in the manner provided by section 3 of same rule. The indemnity bond is not required by the Rules of Court for purposes of appeal, but only for staying the execution of the appealed judgment. Judicial Rule 40 requires the posting of a bond only to answer for the satisfaction of any judgment for costs, and for said purpose the amount of ₱25.00 deposited is enough under the same rule.[4] If defendant is allowed to appeal as a pauper, he need not file an appeal bond to perfect his appeal. To stay execution of the judgment, however, he must file a supersedeas bond and pay the rents during the pendency of his appeal. "We cannot but sympathize with defendant's allegation that he was unable to deposit the rents in question because of his poverty, but his penurious situation does not justify impairing

8 Mitscheiener v. Barrios et al, *supra*.
9 Domingo v. Court of First Instance of Nueva Ecija, SC-G. R. No. L-362 August 31, 1946.
10 Domingo v. Court of First Instance of Nueva Ecija, *supra*.
1 Rule 72 sec. 8; Angel Jose Realty Corp. v. Galao et al, SC-G. R. No. L-45 February 26, 1946; Domingo v. Court of First Instance of Nueva Ecija, *supra*.
2 Angel Jose Realty Corp. v. Galao, *supra*; De la Fuente et al v. Jugo et al, S-C G. R. No. L-212 March 12, 1946; See also Rule 41 sec. 9; Sumulong v. Imperial, 51 Phil. 251; Vda. de Sy Quia v. Concepcion and Palma, 60 Phil. 186.
3 De la Fuente et al v. Jugo et al, *supra*.
4 Mitschiener v. Barrios et al, *supra*.

plaintiff's legal rights nor depriving him of the use of his property without due compensation."[5]

From the words of section 8 of Rule 72, the purposes apparently of the supersedeas bond are to answer for the payment of (a) rents, (b) damages, and (c) costs, down to the time of the final judgment in the action. As there are none practically to be adjudicated as damages in ejectment cases except the loss of rents or of their equivalent, if the defendant chooses to pay the plaintiff or to deposit with the court all the back rents, the filing of a supersedeas bond becomes a useless and empty formality.[6] Since the supersedeas bond is liable for costs, once it is filed, the appeal bond, which is also for costs, becomes unnecessary.[7]

The court does not have any authority to extend the reglamentary period for the payment of rents during the pendency of the appeal.[8] The court however has authority to extend such period for the filing of the supersedeas bond for stay of execution.[9]

In Mapua et al v. Gutierrez David et al, SC-G.R. No. L697 August 30, 1946, the plaintiff attempted to move for the execution of a judgment of ejection in a detainer action upon special reasons under authority of Rule 39 section 2 of the Rules of Court. Inasmuch as the same rule confers discretion on the court to issue execution or to stay the same upon approval of a supersedeas bond, the Supreme Court did not decide the question whether or not Rule 39 section 2 on the general provision for execution of judgments pending appeal applies in forcible entry and detainer actions, which have its own special rule for immediate execution of judgments of ejection. The question remains to be answered in future cases.

Stay of execution on appeal to Court of Appeals or Supreme Court

The provision (rule 72 section 9) on stay of execution on appeal to the Court of Appeals or Supreme Court presuppposes three alternative situations, i.e., (a) when no appeal is filed either by plaintiff or defendant; (b) when plaintiff is the one who appeals; and (c) when defendant is the one appealing. Concerning the first two situations, there being no specific directive as to what is to be done, it is presumed that the general rule should be followed—that no execution shall be issued before the decision becomes final and executory. In the third situation, section 9 of Rule 71 indicates two courses of action: first, during the time and while defendant has not as yet filed his appeal no execution shall be issued until the period of time for perfecting the appeal has expired and the judgment has become final; and second, where the appeal is filed, the court of first instance may order execution if the defendant does not comply with the condition required by said section, that is, of paying either to plaintiff or into the appellate court the amount referred to in section 8 of Rule 72, consisting of rents due from time to time or the reasonable value of the use and occupation of the premises at the rate determined by the judgment. This means that if defendant complies with the condition, execution shall not be ordered. The evident purpose of the provision is to insure the collection by

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5 Arcega v. Dizon, SC-G. R. No. L-195 February 20, 1946.
6 Mitschiener v. Barrios et al, *supra*.
7 Belmonte v. Marin, SC-G. R. No. L-57 February 25, 1946; Fernando v. De la Cruz, 61 Phil. 435.
8 Arcega v. Dizon, *supra;* Lapuz v. Court of First Instance, 46 Phil. 77.
9 Tolentino v. Court of First Instance of Manila, SC-G. R. No. L-32 November 15, 1945; Igama v. Soria, 42 Phil. 11.

plaintiff of said amounts in case the appellate court should affirm his right to collect them, but in no case to defeat defendants' right of appeal.[10]

Whether to issue or not to issue an order of execution, the lower court must have to wait until the appeal is filed, if at all, otherwise appellants will be deprived of their statutory time within which to appeal and will compel them to engage in a race with the court, whether they file their appeal first and before the court issues the order of execution, with the result that appellants will be always placed in the losing end, as they can never be in a better position than the court to foresee when the decision will be rendered and promulgated.[1]

10 Cruz et al v. Jugo et al, SC-G. R. No. L-402 August 14, 1946.
1 Cruz et al v. Jugo et al, *supra*.

IF *we allow freely such flagrant trampling of the personal freedom of our citizens, we shall shake the faith of one hundred million fellow malayans in the effectiveness of democratic processes, and one billion orientals shall cease to look here for MacArthur's Citadel of Democracy.*—JUSTICE GREGORIO PERFECTO, Dissenting Opinion, Lily Raquiza v. Bradford, 41 Off Gazette 626, 658.

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