7 Phil. 610

[G.R. No. 2940. March 06, 1907]

JOSE FIANZA ET AL., PLAINTIFFS AND APPELLEES, VS. J. F. REAVIS, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The plaintiffs brought this action in the court below to enjoin the defendant from interfering with two gold mines alleged to be the property of the plaintiffs. A temporary injunction was granted as prayed for in the complaint; the case was tried in the court below and the injunction made perpetual. The defendant moved for a new trial, which was denied, and he has brought the case here by bill of exceptions. The court below found, among other things, substantially as follows:

More than fifty years prior to the commencement of this suit one Toctoc, an Igorot, and the grandfather of Jose Fianza, one of the plaintiffs, was in the sole and exclusive possession of certain mineral lands containing gold quartz, situated in Antamoc, in the jurisdiction of Itogon, in the Province of Benguet. These lands, being the same in dispute in this case, were of irregular boundaries and contained about 183,000 square meters, and were situated on the slope of the mountain or hill called "Antamoc Mountain," and were divided into two parts by a small *arroyo* called Antamoc, the mine on one side being known as "Antamoc" and on the other as "Ampasit." The two mines were connected and formed one tract.

These lands or mines during the lifetime of Toctoc were opened and developed mines and worked from year to year after the style and manner of Igorot miners and their customs of mining; the said Toctoc claiming the ownership of said mines, and his title and ownership thereto were generally known and recognized by the people of the community and the vicinity.

Toctoc had no paper title to said mines under the Spanish Government. No title or concession was ever granted to Toctoc or his heirs and successors, and the plaintiffs have

no such paper title thereto.

On the death of Toctoc his son, Dominguez, succeeded him in the possession and ownership of said mines, in all respects as his father had held and claimed them, and continued to so hold and claim and work them to the exclusion of any and all others, and without dispute, interference, or interruption until the date of his death, which occurred about ten years prior to the commencement of this suit. Upon the death of Dominguez, the plaintiff, Jose Fianza, and his coplaintiffs, as heirs at law of the said Toctoc and Dominguez, came into the possession of said mines under like claims of title and ownership, possessing, working, and claiming them as owners, to the exclusion of any and all other claimants, and without interference or adverse claims of any kind, and continued to do so up to the date of the commencement of this suit, except as stated thereafter in said decision.

The court further found that as in the case of Toctoc and Dominguez, the ownership of these heirs and claimants to these mines was well known and understood among the natives and residents generally of the province, including the Spanish officials, and generally recognized and their possession respected. For more than fifty years these mines were held and worked in this Igorot family, and at the time of the American occupation were well-known, discovered, improved, and developed mines, and had produced gold for many years, and were still producing gold. During all the time covered by the disputes that have arisen between the parties to this suit, some of the parties have been living upon and next to the lands in dispute, and holding possession thereof and working the same for themselves and their coclaimants. Three of the plaintiffs were there living in possession of said mines prior to the arrival of the defendant Reavis. They have continued since that time to so live upon and possess the same up to the date of the commencement of this suit, and without interruption, save by the acts of the defendant Reavis as thereinafter stated in said decision.

The court further found that in the month of March, 1901, the defendant Reavis entered upon the lands embraced in and next to the mines of the plaintiffs and upon the alleged information that said mines of the plaintiffs had been located under the Spanish Mining Law by one Hans Holman in the year 1896, and that said lands and mines were abandoned by the said Holman and were vacant mineral and public lands, proceeded to stake and locate three claims under the mining laws in force in the United States, and including the mines of the plaintiffs, which claims were named by the said Reavis the “Otek,” the “Texas,” and the “Clayton.” Immediately after this act of Reavis, the plaintiff, Fianza, for himself and his coplaintiffs, protested against the placing by Reavis of the stakes upon his mines, and made a formal protest to H. P. Whitmarsh, then governor of Benguet. In May, 1902, the plaintiff,

Fianza, again made a formal protest to William F. Pack, then governor of the Province of Benguet, of the trespass and usurpation of Reavis upon the mines in question. A hearing was had before the governor, in which Reavis took part, and it was agreed between the plaintiffs and Reavis that Reavis would not interfere with the actual possession of the plaintiffs and their working of the mines, and that the plaintiffs should not prevent Reavis from coming upon the land from time to time for the purpose of doing assessment work, and that this should continue until the questions in dispute between them could be submitted to the Court of First Instance for decision. A few days after this, and before July 1, 1902, the plaintiffs caused the boundaries of their claims and mines to be distinctly marked by substantial posts and monuments. These posts were placed by the plaintiffs prior to the locations under which the defendant Reavis now claims. Prior to July 1, 1902, Fianza placed upon a building standing upon the property in question a wooden sign with a printed notice thereon stating that they were his mines. A few days thereafter Reavis removed the sign and broke it up. On the 10th day of October, 1902, Reavis made and caused to be recorded in the office of the provincial secretary of Benguet three several declarations for claims or mines named by him “Otek,” “Clayton,” and “Texas,” covering the same ground as his three previous attempts to locate under the United States mining laws.

Reavis having presented evidence to show that Vicente Carrera in the year 1896, and Hans Holman in the same year, denounced these mines in accordance with the Spanish mining laws, the court found that neither of these alleged denouncements were in fact made at any time, and that no denouncement, location, or entry upon the lands in question had ever been made by any person under the Spanish mining laws in force in these Islands.

The court further found that Reavis entered upon the mines in the year 1901 and staked out his three claims in the honest, though mistaken, belief that the same were included in an abandoned and forfeited Spanish grant of Holman’s, and that at the time of his entry thereon and the setting of his stakes he had no actual knowledge that the Igorots, who were then living upon the lands, claimed the ownership of said mines, but that within a few days after this entry he received notice of the plaintiffs’ claim of ownership and before he had expended any considerable amount of either time, labor, or money thereon. When he made his locations and filed the declarations, under which he now claims, he had full knowledge of the claims of ownership of the plaintiffs and that the plaintiffs were at that date, and for a long time prior thereto, and before the passing and approval of the act of Congress of July 1, 1902, had been in the actual possession and working of said mines.

Up to the month of May, 1902, Reavis was not in the actual and continuous possession of

the lands embraced in his attempted locations and his only possession was when he entered thereon from time to time to do assessment and development work, and his possession for such purposes was maintained by threats and intimidation and against the protest of the plaintiffs.

In the year 1901 the plaintiffs took from the said mines gold of the weight of 40 silver pesos; in the year 1902, the weight of 70 silver pesos; and in the year 1903, the weight of 90 silver pesos.

The above statement of facts found by the court below is not complete, but it is sufficient, we think, for the purposes of this decision.

The first defense to the action is, according to the brief of the appellant, that the land sued for is not described in the complaint with sufficient certainty or definiteness to support a judgment for the plaintiff.

During the trial in the court below, the complaint was, by leave of the court and against the objection and exception of the defendant, amended so that the first paragraph should read as follows:

> "First. For many years, the number of which is unknown to your orators, they and their ancestors have owned, possessed, and worked two gold mines lying in the barrio of Antamoc, in the township of Itogon, Province of Benguet, the description of which mines appears in plaintiff's Exhibit C, which is hereby made a part of this complaint, the boundaries of which mines are marked by posts set in the ground, which boundaries are well known to all of your orators' neighbors, said mines being well developed, open mines called 'Antamoc' and 'Ampasit.'"

Exhibit C which is thus made a part of the complaint is a plan made by a surveyor. It gives the courses and distances of the boundary lines, the boundaries by reference to natural objects, and the relation of such objects by distances to the lines of the survey. According to the brief of the defendant, the land described in this plan is 1,542 feet on one side, 1,075 feet on the second side, 887 feet on another side, and 742 feet on the fourth side, and there can be no doubt that the tract of land described in this Exhibit C can be accurately located upon the ground. There is, therefore, no doubt that the description contained in the amended complaint is sufficient.

The real objection is that the court erred in allowing the amendment. In view of the provisions of sections 109 and 110 of the Code of Civil Procedure relating to amendments, this objection can not be sustained.

The second defense, according to the appellant's brief, is that the record does not disclose how or in what way the land claimed by plaintiffs conflicts with defendants locations.

More or less evidence was offered to show where the defendant's claims were. It is apparent that all or nearly all of the defendant's location "Otek" is outside of the land claimed by the plaintiffs. It is also proven that some if not all of the other two locations are within the land claimed by the plaintiffs. We do not see how it is important to determine exactly the location of the defendant's claims. The location of the plaintiffs' land is determined with accuracy and the judgment of the court below prohibits the defendant from interfering with that well-defined and well-ascertained tract of land, and there can be no trouble in enforcing that judgment so far as the description of the property is concerned.

The third defense, according to the appellant's brief, is that the plaintiffs have never possessed or mined any particular tract of ground under claim of ownership to the exclusion of all others.

It will be noticed that the court below found to the contrary of what is stated in this defense. We can not reverse the judgment unless it appears that this and other findings of fact, made by the court below, are plainly and manifestly against the weight of the evidence. (De la Rama *vs*. De la Rama, 201 U S., 303.) We are entirely satisfied that no such conclusion can be reached and we are also satisfied that the evidence not only is not contrary to the findings, but that the latter are supported by the preponderance of proof.

So much stress is laid upon this point by the appellant that it seems necessary to consider in some detail the evidence. The appellant upon this point claims, first, that there never were any mines, as that word is properly understood, on the land in question, but merely slight excavations which were abandoned practically as soon as made, and, second, that plaintiffs have not, in any event, been in the continuous possession of the mines.

Upon the first question, as to whether these were real mines or not, it appears from the record that on the 31st of January, 1901, and before Reavis ever appeared in Antamoc, Fianza, one of the plaintiffs, made written declarations "relativas a las dos partidas de Minas de oro, que radican en Antamoc, de esta jurisdiccion, las cuales venian disfrutando desde mas de veintidos años, habiendolas recibido como herencia, de sus antepasados."

These declarations were made for the purposes of taxation, and on the 11th of February, 1901, he paid the taxes on this and other property, as he did also in 1902 and 1903.

That these were certain, definite, and well-known mines is proved by the evidence of the defendant's witnesses. Vicente Carrera, who said that he had denounced the mines, testified: "I denounced the mines which are situated at the eastern part of the houses named Antamoc and I also denounced the mines situated on the western part of the houses which were called Ampasit.

* * * * *

> "Q. What work, if any, did you ever do on that ground after you denounced them?
>
> "A. Nothing, because they were not ceded to us, with the exception of the road we made which goes to the mines. * * * We had to build a road from the main trail to the mouth of the mine."

He testified also that he bought gold from Dominguez, and when asked where Dominguez got this gold he said:

> "A. I don't know, but I think he got it from Antamoc, because I know the nature of the fineness of the gold from these mines.
>
> "Q. And then the people were already working these mines you denounced?
>
> "A. Yes. * * *
>
> "Q. Do you know who, according to public rumor was the owner of those mines?
>
> "A. Public rumor among the Igorots was that they were the mines and property of Dominguez."

Robiera, another witness for the defendant testified:

> "I have seen the excavations from a distance. From a distance I saw where dirt had been thrown up out of the excavations, but I never have been up to the

mines."

Francisco Velancio, another witness for the defendant, testified:

"Q. How many times did you see Fianza and his father go up to these mines in Antamoc?

"A. I saw his father going up there often.

"Q. How often did you see Fianza going up to the mines?

"A. Sometimes I saw him in the mines at Antamoc."

Hans Holman, another witness for the defendant, on whose adverse claim to this same property the defendant relies to defeat the prescription alleged by the plaintiffs, shows the existence of well-defined mines. He testified:

"A. We denounced that mine and the papers which we made out were burnt up in the *comandancia* during the Spanish Government. We commenced the denouncement of that mine in 1896."

H. P. Whitmarsh, a witness for the defendant, testified:

"A. Yes. The first trip I made up to the Trinidad I went over to Antamoc. I went there to get information about the mines and the country. I was a newspaper reporter then. * * *

"Q. Did you have any talk with him (Fianza) in reference to mines in Antamoc?

"A. All about the mines in the vicinity. He advised me to go over to Antamoc to look at them."

J. E. Kelly, a witness for the defendant, testified that he became acquainted with the property now claimed by Reavis in January, 1901, when he first arrived in Benguet; that having learned that Holman had an interest therein he went to Manila to see him in March

or April of the same year "with a view to purchasing his Antamoc holdings." Holman then told him that he had a mine there.

Reavis knew of Holman's claim, and before he did anything at all upon the property went to see him and was told by Holman that he, Holman, had a certain number of meters there and *that anyone could tell him where the property was*. Reavis made no further investigation, and a few days thereafter, and in March, 1901, made his first entry upon the land. The following question was asked Reavis by his counsel:

> "Q. What induced you to locate upon land which had been pointed out to you as Holman's grant?
>
> "A. Because I had learned previously that there were no grants in this part of the country, and thinking that Mr. Holman had not complied with any of the laws and didn't intend to, I thought I would go into it and see what chance I had with it."

Commenting apparently upon this answer, the court below in its decision said:

> "He went to Antamoc to stake out land for himself that he believed was then claimed by another—in the vernacular of the miner, to 'jump Hans Holman's claim.' He was not prospecting for a mine and for hidden minerals; he went to locate a mine already discovered and mineral uncovered and worked for more than a half a century. He found honest American miners and prospectors already there with claims staked all about the land that they believed was claimed by another and for the protection of which the opened, developed, and worked mine the rumor of an owner was amply sufficient to protect it from invasion and trespass."

Reavis was asked this question:

> "Q. How long did you prospect at Antamoc before you discovered a mine?
>
> "A. About half an hour or an hour; I discovered that it was a mineral country."

William Knouber, another witness for the defendant, testified that while a soldier in the American Army at Bautista he became acquainted with a Spaniard, Teodoro Miguel, who had been in Benguet. He brought Miguel to Manila and afterwards took him to Baguio and was at Antamoc on the 9th of January, 1900. He was asked this question:

> "Q. Did you make any inquiries as to whether or not there were any mining claims in Antamoc?
>
> "A. Yes, sir. That is mostly what I went there for.
>
> * * * * *
>
> "A. The Spaniard and I went down to Itogon. We looked for the president or someone that knew of this mine or property, who it belonged to, and who was supposed to own it. This man Fianza said he knew the property and knew it belonged to Mr. Holman. * * * Of course we couldn't do anything, so when I went back to Manila I went to see Mr. Holman about it and he showed me maps and papers of the different pieces of property."

Knouber testified that he went out to the property with Fianza, who pointed out Holman's stakes, and that he then saw men digging upon the land included within the stakes.

That this claim of Holman's is the same land now claimed by the plaintiffs is proved by the testimony of Holman himself. Exhibit C having been shown him, he stated:

> "Q. Is this paper, plaintiffs' Exhibit C, the plan of the ground you located?
>
> "A. It is.
>
> "Q. How do you know this is the same land you denounced?
>
> "A. I went there myself.
>
> "Q. By what mark do you recognize that as the same land?
>
> "A. It is the same upon which I placed stakes.
>
> "Q. Were your stakes placed in the same position as the stakes indicated on this

map?

"A. Yes."

Fianza testified that he pointed out to the surveyor the boundaries indicated by the posts and designated on the plan, and added that they were the same boundaries which were shown to him by his father.

It is, therefore, well established by the evidence that Holman's claim related to well-known mines and that these are the same mines which are now claimed by the plaintiffs. Nearly every witness interested in mining presented by the defense, upon arrival in Benguet went at once to Antamoc and made inquiries about these precise mines, and Kelly, Reavis himself, and Knouber saw Holman, apparently for the purpose of making some contract with him in reference thereto.

The defendant relies very much upon the testimony of certain American miners who at the time of the trial had been in the country about three years, and who undertook to testify as to the mining customs of the Igorots, saying that they mined one day in one place and that if they found no gold they mined somewhere else, and that they never made any claim to the exclusive ownership of any tract of land. All of these witnesses had mining claims similar to that of Reavis. The claim of Clyde adjoins that of Reavis. It is to be observed that in their testimony they made no reference to this particular tract of land. They did not say that, as to this particular tract of land, there never had been any claim made by an Igorot to exclusive ownership. But in no event could this general testimony overcome the positive testimony of the plaintiffs' witnesses, many having been presented who testified that the land was worked exclusively by Fianza and his ancestors, and that other people were kept off.

Fianza's statement, quoted by the appellant, to the effect that "our custom is if we do not find gold in 1 fathom or 2 fathoms, we make another place until we do find something" is entirely consistent with his claim to the exclusive ownership of this property. The fact that he and his ancestors moved around and dug holes in different places upon this property appears from the evidence. The witnesses testified that on the property there were a great many excavations.

The property in question being certain well-known and well-defined mines, the next question is, Did the plaintiffs and their ancestors have the exclusive possession and control of the same? The testimony of the plaintiffs' witnesses is positive and direct that Toctoc and

Dominguez worked these mines and that no one else did, and that since the death of Dominguez, Fianza has worked them in the same way. The defendant claims, however, that this possession has been interrupted. The first interruption relied upon, apparently, is what was done by Vicente Carrera in 1896, but it is apparent from the testimony of Carrera, already quoted, that whatever he might have done in relation to filing papers in the government office at Baguio, he never did anything upon the land itself. The building of his trail, 1 meter wide, up to the mines could in no sense be called an interruption of the possession of Fianza and his associates. It was a mere casual trespass.

Neither did the claim of Holman interrupt this possession of the plaintiffs. He never obtained any concession from the Government. None of the acts required by the law, then in force, were done by him except perhaps the presentation of one paper in the office at Baguio, and the payment of certain fees. Under the said laws, these acts could not in any way interrupt the possession then held by Fianza. If in pursuance of this attempt he had actually entered upon the land and had ousted Fianza and kept the possession himself, it might be claimed that there had been an interruption of the latter's possession, but his own evidence shows that nothing of that kind was ever done. The only thing which he did do was to survey the land and place stakes thereon. This act was not an interruption of the possession of Fianza. (Balpiedad *vs*. Insular Government,[1] 4 Off. Gaz., 390.) Just what Holman did appears from his own testimony. He said:

> "Q. Did you buy these gold mines from the Igorots or anyone else?
>
> "A. No; I only denounced them to the Spanish Government.
>
> * * * * *
>
> "Q. What is the reason you didn't continue your *denuncia*?
>
> "A. I was afraid. I left that mine because I am not a miner.
>
> "Q. Was it in 1898 or 1899 when you quit the mines then?
>
> "A. No, I didn't work the mines. I didn't care to. I only bought the gold.
>
> "Q. Did you ever hire any work done on these mines?
>
> "A. No; no one.

"Q. Did anyone pay for the work for you?

"A. They worked for me. I didn't pay for their work, but the gold.

"Q. In what capacity did you make contracts with the Igorots to work those mines?

"A. I didn't make any contracts.

"Q. Didn't I understand you to say that you made contracts with certain Igorots to mine there and they gave you a certain part of the gold as owner of the mine?

"A. No.

"Q. Did you have any contracts with Igorots at all?

"A. No.

"Q. I mean after you denounced the mines of Antamoc?

"A. Yes; I told the Igorots that were working there that they must give the gold to me and not sell to any other one. That was the contract."

It is very clear that these acts constituted no interruption of the possession of Fianza. And so Fianza's possession continued up to the time of Reavis. Reavis entered upon the land and staked the claims in March, 1901. Fianza at once protested to Governor Whitmarsh. Governor Whitmarsh testified that Fianza "came and said that some American had taken up property which he claimed and he wanted me to throw the American off. I told him, as far as I knew, there was no law under which he could do anything at that time and I advised him to put the matter off until something more definite was provided. At that time I was the governor under the Civil Government and very little was done under the laws."

Whitmarsh having refused to do anything, when Governor Pack arrived, Fianza, in 1902, made a written protest to him. Reavis was summoned before the governor, a hearing was had, and an agreement was made as stated in the findings of the court.

On the 9th of May, 1902, Fianza's claim was staked by Wagner, who testified that he found there old stakes, evidently those of Holman's, and Wagner then made out for Fianza a written claim to the mines, which was filed in Baguio. Fianza posted a notice on the

property, which Reavis tore down and broke to pieces. While Reavis says in several places that none of the Igorots made any protest, yet having testified that he did not know the Igorot language, he was asked:

> "Q. Then, if you couldn't understand him, you didn't know whether he ever protested to you about the Igorot mines which you claim?
>
> "A. I think he did. Yes."

That Fianza and his associates were in possession of the mines in 1901, 1902, and 1903 is proved by the fact that during those years they took therefrom gold to the amount indicated in the findings of the court in that respect. We have not been able to find any evidence to the effect that Reavis took any gold at all from this property during those years. The work that Reavis did was evidently that which he thought was required by the law. Most of it appears from the evidence to have been done on the claim called "Otek," which is outside of the boundaries of the plaintiffs' claim. The fact that some of the Igorots worked for Reavis is not important, because that work might have been and probably was done upon the claim "Otek," upon which was situated Reavis' house, and where, as said before, the principal part of his work was done.

A great many witnesses for the defendant testified that they had talked with Fianza and that he did not make any claim to this land, and said that it was Holman's. Evidence of these admissions is not sufficient to show that the findings of the court below as to plaintiffs' ownership is plainly and manifestly against the weight of the evidence. Fianza denied the making of such admissions. Most of the witnesses did not speak or understand Igorot, and under such circumstances no great weight can be given to such alleged admissions. For example, Reavis testified:

> "Q. If you don't know his language and he doesn't know yours, how, then, could you understand him?
>
> "A. I believe that a man can understand a word or two. It would seem to me that he could explain it by saying 'vamoose' or something like that and I could understand it."

The essential findings of fact made by the court below being sustained by the evidence, it remains to consider what, in view of such facts, are the legal rights of the parties.

Neither the plaintiffs nor the defendant ever acquired any title to this property by virtue of the provisions of the Spanish law. It was, therefore, at the time the Islands were ceded to the United States, public property, and these lands are public lands to which the provisions of the act of Congress of July 1, 1902, are applicable. (32 U. S. Stat. L., 691.) Section 45 of that act is as follows:

> "SEC. 45. That where such person or association, they and their grantors have held and worked their claims for a period equal to the time prescribed by the statute of limitations of the Philippine Islands, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this act, in the absence of any adverse claim; but nothing in this act shall be deemed to impair any lien which may have attached in any way whatever prior to the issuance of a patent."

This is the provision of law upon which the court below decided the case in favor of the plaintiffs. This view of that court must, in our opinion, be sustained. The statute of limitations of the Philippine Islands in force on July 1, 1902, was ten years. According to the evidence and the findings, the plaintiffs had held and worked these claims for more than that length of time prior to the 1st day of July, 1902. They had for more than forty years prior to that date been in the possession thereof. That possession had been open, notorious, continuous, and under a claim of ownership.

That possession has not been interrupted. It is certain that neither Carrera nor Holman nor Reavis ever dispossessed the plaintiffs. They remained in possession and worked these mines during all the years 1901, 1902, and 1903 while Reavis was in Antamoc. Whatever he did upon the land was done while the plaintiffs still remained in the actual possession thereof. As before stated, the court found that Reavis's only possession was when he entered on the land from time to time to do assessment and development work, and his possession for such purposes was maintained by threats and intimidation, and against the protests of the plaintiffs.

It is claimed by the appellant that the plaintiffs are not entitled to the benefit of this section 45 because they made no location of the property ten years before the passing of the act.

We do not understand that such a location is required by the terms of that section. In the case of Belk *vs.* Meagher (104 U. S., 279) the court said, at page 287:

> "Under the provisions of the Revised Statutes relied on, Belk could not get a patent for the claim he attempted to locate unless he secured what is here made the equivalent of a valid location by actually holding and working for the requisite time."

Whether the act of Congress of July 1, 1902, took effect in these Islands at the time it was signed by the President (Gardner *vs.* The Collector, 6 Wall., 499) or when it was promulgated, it is not necessary to determine, for in either case the rights of the plaintiffs were fixed by that act before Reavis, in October, 1902, took any proceedings thereunder. When the act took effect the plaintiffs became entitled to a patent thereto from the Government.

It is suggested by the defendant that section 45 does not apply because it relates to cases in which there is no adverse claim, and that in the present case there exists the adverse claim of Reavis. It is evident that if a person is otherwise entitled to a tract of land in accordance with the provisions of said section 45, his right can not be taken away by the mere fact that some other person makes a claim adverse to his. If such were the construction to be placed upon the section, its object might be entirely defeated, for in every case adverse claims, entirely unfounded, could be presented for that purpose only. It is plain that that provision in section 45 indicates merely that the proceedings for the delivery of the patent shall be delayed until the validity of the adverse claim is determined in the courts of justice. When locations are regularly made under the act and adverse claims are filed thereto, section 39 provides that all proceedings "shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction or the adverse claim waived." The provisions of section 39 undoubtedly are in this respect applicable to such adverse claim as is mentioned in section 45.

It appears from the evidence and the findings of the court that some time in the spring of 1901 four or five American miners living in Benguet undertook to establish the "Antamoc mining district," and to appoint a mining recorder. With this mining recorder Reavis filed certain locations on a part of the property in question. These steps were taken and these proceedings were had in accordance with what the organizers of this district thought to be the laws in force in the United States in regard to mines. These laws were not in force in the

Philippine Islands at that time and the proceedings of the persons who thus organized the "Antamoc mining district" were entirely null and void.

The locations made by Reavis in accordance with the act of Congress of July 1, 1902, were not made until October of that year. They were made after the rights of the plaintiffs had become vested in accordance with the provisions of said section 45, and therefore such locations can not prejudice the plaintiffs. The court below held that even these locations were invalid, in accordance with the said act. It is not necessary, however, to determine this question.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

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

---

[1] 6 Phil. Rep., 135.

DISSENTING

JOHNSON, J., with whom concurs **CARSON, J.:**

This was an action begun in the Court of First Instance of the Province of Benguet by the plaintiffs for the purpose of enjoining, restricting, and inhibiting the defendant from entering upon two certain gold mines lying and being in the barrio of Antamoc, in the township of Itogon, Province of Benguet; *no certain description of said mines could be given* at the time of the commencement of the action according to the complaint of the plaintiffs.

Upon the filing of the complaint the court granted a temporary injunction to prevent the defendant from entering upon this indefinite, unlocated, indescribable tract or parcel of land. By computation it was found that this indefinite, unlocated parallelogram contained about 70,000 square meters. After the beginning of the trial of said cause, the plaintiff caused a survey of the alleged mines to be made by one Balpiedad; the result of said survey is represented in Exhibit C, presented in evidence by the plaintiffs, which represents the parallelogram or mines to be in the following form:

(See chart in Philippine Reports Vol. 7, page 631)

This exhibit or survey, showing the limits of said land in question, was not completed or offered in evidence until after practically all of the witnesses for the plaintiffs had been examined. After the admission of the said exhibit, the plaintiffs asked that they be allowed to amend their pleadings to conform to said exhibit, which request was granted.

The court in its decision found that "the land included in the said Exhibit C was the land in dispute, was of irregular boundaries, contained about 183,000 square meters, was situated on the slope of a mountain called 'Antamoc Mountain,' and under the statute of limitations, act of Congress of July 1, 1902, that the *Government of the Philippine Islands holds the title in trust for the plaintiffs;"* thereby holding that the title to this indefinite, irregular tract of land, somewhere on the mountain, poorly described, was being held by the Government of the Philippine Islands for the plaintiffs.

The plaintiffs alleged, in their petition, that "they, their fathers, and his father and his grandfather had worked said mines for many years."

We have, therefore, the following conditions:

(1) That the plaintiffs, their fathers and grandfathers had been in possession of the land for *many* years, the *exact number being unknown*, of a parcel of lands or mines, which at the *beginning of the action could not be definitely described*.

(2) That in the attempt to describe it, it was designated as a parallelogram containing about 70,000 square meters.

(3) That the lower court at the *beginning of the action* enjoined the defendant from entering upon the tract of land *not located nor described*, and admittedly a tract which could not be *definitely located nor described*.

(4) That the lower court, at the conclusion of the trial, made such temporary injunction perpetual after it had been clearly proved that the land referred to in the first injunction was not the same land which the plaintiff claimed in said Exhibit C.

(5) That the plaintiffs, at the beginning of the action, were not the owners of the said tract of land, but that the same belonged to the Government of the Philippine Islands and was being held in trust by said Government for the plaintiffs.

(6) That they were unable to definitely locate the lines of said mines until after the beginning of the trial of said cause, and when it was definitely described it was not a parallelogram, and contained nearly three times as much area as that described in the petition of the plaintiffs. It would seem but reasonable to believe that if the plaintiffs, their fathers and grandfathers had been in the possession of a definite, well-known tract or parcel of land for so many years, *to the exclusion of all other persons whomsoever*, its limits might in some way have been definitely described, or at least it might have been described in a way to have included more than one-third of a tract of land which "they, their fathers and grandfathers" had occupied for many years to the exclusion of all other persons.

We assert in the beginning that these facts engender suspicion of the exclusive right of the plaintiffs to any well-defined tract of land. We are also of the opinion that until it is proved (*a*) *that the plaintiffs have an absolute and exclusive right to a particular tract of land;* and (*b*) *that said tract of land has well-defined metes and bounds,* the court had no right or authority to issue an injunction prohibiting or restraining the defendant from entering thereon. The court had no authority to issue an injunction to prevent the defendant from entering upon any parcel of land until that parcel of land was well-defined by metes and bounds, for otherwise the defendant would be unable to know when, or how, or in what manner he would be violating such injunction.

It will be noted that upon the filing of the petition of the plaintiffs herein, when the petition upon its face alleged that *no particular description of the mines in question could be given*, the court *enjoined* the defendant from entering thereon. Entering upon what lands? Lands somewhere in the Province of Benguet—somewhere on the mountain called Antamoc. This temporary injunction, at the conclusion of the trial, was made perpetual.

After the decision was rendered, the defendant, through his attorneys, made a motion for a new trial, basing the same upon the following reasons:

1. *That the findings of fact were openly and manifestly against the weight of the evidence.*

2. That the evidence was insufficient to justify the decision.

3. That the decision and judgment of the court were against the law.

This motion for a new trial was denied.

This motion being based expressly upon the provisions of paragraph 3 of section 497 of the Code of Procedure in Civil Actions, we are justified in examining the evidence for the purpose of ascertaining whether or not the conclusions of the lower court were justified by such evidence. We, therefore, purpose to examine the evidence adduced during the trial of said cause upon each of the respective questions of fact presented, and allow the record to speak for itself.

Our *first* proposition is, that neither the plaintiffs nor their predecessors occupied any definite piece or parcel of land or mines in the Province of Benguet or elsewhere for any period, to the exclusion of all other persons; that the plaintiffs and their predecessors were Igorots; that they lived in tribes much as the American Indians did; that they never asserted their rights to any well-defined parcel of land nor occupied any well-defined parcel of land to the exclusion of other persons, either strangers or members of the particular tribe. Upon this proposition we refer to the record for the answer.

The petition alleges that the said mines are in the barrio of Antamoc. What is Antamoc?

Madarang (Igorot) said (Rec., p. 18): “The whole mountain is known as Antamoc.”

Bisguey (Igorot and one of the plaintiffs), in answer to the question, “What is Antamoc?” said (Rec., p. 21):

> “It is a barrio, and is a place called Antamoc.”

On page 22, the same witness, in reply to the question, “Are the *barrios* of *Tecop, Ampasit,* and *Antamoc* situated in the mountain called Antamoc?” said, “Yes, sir.”

Emigdio Octaviano said (Rec., p. 27): “He knew the place called Antamoc.”

Mateo Cariño (Igorot) said (Rec., p. 27): “That Antamoc was a mountain and that there are places called Ampasit, Antamoc, Niug, and Loacan.”

From the foregoing testimony of the witnesses, all of whom resided in the vicinity of the land in question, it appears clearly that Antamoc was a mountain; therefore any description of a parcel of land described simply as being in Antamoc would certainly be too indefinite and uncertain upon which to grant an injunction to prevent trespass upon such undefined parcel of land.

With the reference to the *exact location* of said mines in said mountain, we have the following proof in the record:

Jose Fianza (Igorot and one of the plaintiffs), in answer to the question, "Where were those mines?" said (Rec., p. 2), "They were in Antamoc and Ampasit."

The same witness further said (Rec., p. 7) that "Wagner (Governor Pack's clerk) put in the stakes where his (Fianza's) claims were."

With reference to the specific and exact location of the land in question, the said Wagner (Rec., p. 65) testified as follows:

> "Q. Who indicated to you the place where the posts you have referred to, should be put?
>
> "A. Fianza.
>
> "Q. Did he name these posts to you as the boundary or boundaries of his claim or claims?
>
> "A. If I remember correctly it was the boundaries of his claim—a single claim. I asked him when he first started out if that was his boundary and he told me 'yes.' Now, whether he was including any one claim or claims I can not say.
>
> "Q. To the best of your recollection were these dimensions the correct ones as shown by Fianza?
>
> "A. Approximately, yes."

Wagner further stated that the claims pointed out to him by Fianza, and as staked out by him, were approximately 15,000 feet by 600 feet. (Rec., p. 65.)

As to the posts on the claim placed by Wagner, he (Wagner) made the following statement (Rec., p. 64):

> "From the post No. 1 or 2, I don't remember which, we proceeded to the post on the north center part of the claim, thence to the post on the northeastern corner,

> and thence to the post on the southern corner."

Wagner further says (Rec., p. 67), in answer to the question as to the particular posts he (Wagner) placed upon said claims:

> "Q. *There were four posts there then?*
>
> "A. Yes, sir."

As to this Wagner survey, therefore, from the record the following facts appear:

> "The said survey was made on the 9th of May, 1902; it was of the mines as claimed by Fianza; said claim was marked by four posts and the claim was approximately 15,000 feet by 600 feet."

It further appears from the testimony of Wagner that he changed his plans after the survey was made (Rec., p. 68), which plan, it will be noted, was not made a part of the record.

Madarong (Igorot), in speaking of the specific location of the mines in question, said (Rec., p. 16), "That Dominguez (father of one of the plaintiffs) had mines in Itogon and in Antamoc;" and (Rec., p. 18) "That the whole mountain was considered mineral land."

Bisguey (Igorot and one of the plaintiffs) said (Rec., p. 20), referring to the exact location of the mines in question, "That his father, Toto, owned mines in Antamoc," without any further or definite description.

Picarte (Igorot) said (Rec., p. 25) "That he knew by reference that Dominguez claimed to be the owner of some mines called Antamoc and Ampasit."

It will be noted that this is merely hearsay.

Emigdio Octaviano said (Rec., p. 27) that "He knew the place called Antamoc and that there were mines there; and that (Rec., p. 28) he had heard from a man called Caballes that Dominguez claimed said mines; and that (Rec., p. 29) he did not know anything as to their extent."

Juan Cariño (Igorot) in reply to the question (Rec., p. 34), "Do you know whether these mines were the private property of Dominguez or whether he only held them for other people?" answered, *"I only heard* that Dominguez was the owner of these mines and I never heard that he had any associates in the mines with him." Hearsay again.

The same witness further said that the holes were in the mountain called Antamoc and that Dominguez had holes in three places in the mountain called Antamoc.

Chap-Day, Balbadines, Miampis, Lorenzo, Pasio, Tongapel, Tongay, Cateb, and Bitabio, all Igorots, testified (Rec., pp. 40, 43, 45, 50, 52, 53, 55, 56, and 57) that "Dominguez had mines in Antamoc," without giving any further description.

Amey (Igorot), one of the plaintiffs, said (Rec., p. 47) "that her father, Toto, had mines in Antamoc," without any further description.

It will be noted that none of these witnesses, except Wagner (and he simply placed the stakes according to the direction of Fianza, one of the plaintiffs), in any way *attempted to more definitely describe the lands in question than to say that they were in the mountain of Antamoc*. It is contended that even Wagner's description does not definitely locate any land. He does not state that said tract was on one side or the other of said mountain. His description has neither starting point nor end.

Fianza, one of the plaintiffs, with reference to the definite location of the mines in question, testified as follows (Rec., p. 7):

> "Q. Did Mr. Wagner measure the claim?
>
> "A. Yes, sir.
>
> "Q. Did he put in the stakes?
>
> "A. Yes, sir; he placed those pine stakes or posts.
>
> "Q. Did you go with Mr. Wagner?
>
> "A. Yes, sir.
>
> "Q. *Did you show him where your claims are?*

"A. *Yes, sir.*

"Q. And he put the stakes in as you showed us this morning here and marked the place?

"A. Yes, sir."

It will be remembered that Wagner placed four stakes only.

Bearing in mind that the measurements, made by Wagner, were made on the 9th of May, 1902, and that said posts included a parcel or tract of land in the form of a parallelogram, 15,000 by 600 feet somewhere in a mountain, without beginning or end; that the preliminary injunction was granted by the court on the 18th day of January, 1904, to prevent the plaintiff from entering upon this unknown tract of land, a description of which could not at that time be made, and that the Balpiedad survey (Exhibit C) was made February 10, 1904, we quote the testimony of the said Balpiedad for the purpose of ascertaining whether or not the land claimed by Fianza at the time that Wagner made a survey of the same was the same land which he (Fianza) claimed about two years later, at the time the said Balpiedad made his survey.

The witness, Balpiedad, testified as follows (Rec., p. 73):

"Q. Have you made a plan showing the measurements and boundaries of the mines claimed by Jose Fianza, in the barrio of Antamoc?

"A. Yes; I made a sketch plan, except I have not run out the boundary lines, they being direct lines from post to post.

"Q. When did you make this measurement?

"A. During the month of February. * * * It was on the 10th of February, 1904.

"Q. I present you a plan marked 'plaintiff's Exhibit C,' and ask you if it is the plan you have referred to?

"A. Yes, sir.

"Q. *Who showed you the lands and measurements and corners to make this*

measurement and plan?

"A. *Jose Fianza.*

"Q. *How many posts did you find there?*

"A. *Fourteen posts* in addition to some posts that were inside and outside—posts of Mr. Reavis which do appear in the plan."

The COURT (p. 74):

"Q. *How many of these posts did you find on the boundary line?*

"A. *Fourteen posts.*

"Q. How many of these posts were marked in any way?

"A. Some of the posts that I saw were marked with the name of Jose Fianza.

"Q. How many had his name?

"A. *I know there was one.*

"Q. How did the lines pass through the posts—*did you run a line from one post to another?*

"A. *Yes, sir;* the line ran exactly from one corner post to the other, to the interim post made solely for a line.

"Q. *How many of these posts* (Rec., p. 83) which you refer to *did you place there?*

"A. *I did not place a single post.*

"Q. They were already there when you got there, were they?

"A. Yes, sir; according to what Fianza said they had been there a long time—for some time."

It will be noted that prior to the Wagner survey (May 9, 1902), according to the testimony of

Fianza, *no attempt had ever been made by him or his predecessors in any way to definitely mark out the mines which the plaintiffs claim*. It must be remembered also that Wagner placed four posts including a parcel of land in the form of a parallelogram.

Balpiedad, at the time of his survey (February 10, 1904) found fourteen posts, and the form of the parcel of land included in his survey is seen by reference to Exhibit C, which is not a parallelogram. He found fourteen posts instead of four. By reference to the testimony of Fianza and Balpiedad it will be seen that these two witnesses attempted to make it appear that the survey, made by the latter, was simply a measurement from post to post set by Wagner. This testimony can not be believed for the reasons:

(*a*) That Wagner placed but four posts and Balpiedad's measurement included fourteen posts; and

(*b*) That in said Exhibit C, presented by the plaintiff, it will be noticed in the lower right-hand corner of the same that one of the posts placed by Wagner was *within* and *not on the lines* of the boundaries of the land surveyed by Balpiedad. This latter fact alone would seem to be proof positive *that the land* which Fianza, one of the plaintiffs, *claimed in May, 1902, was not the same land claimed by him in February, 1904*.

The fact is further demonstrated by the appearance of the fourteen posts represented in Exhibit C, and the one post in the lower right-hand corner of said Exhibit C, that between the months of May, 1902, and February, 1904, the plaintiffs had made up their minds to include a different and larger portion of the said mountain of Antamoc.

It is apparent also from this same testimony that in the *interim* the four posts placed by Wagner had been increased in number by some interested party so as to include nearly three times the original claim, as well as to change the configuration of the land claimed by the plaintiffs.

One can not read the record in this case without reaching the conclusion that Fianza is in fact the only one of the plaintiffs who has any interest in the land in question, or without reaching the conclusion that he is a sort of a chief of that particular tribe of Igorots. From his testimony he is put in the *position of claiming in May, 1902,* without any *opposition or interference* from anyone, *a particular tract* of land in the form of a parallelogram, and *in February, 1904,* two years later, of *claiming another and larger portion of land and in a different form*. Is this testimony and this claim conformable to the claim of the plaintiffs that they, their fathers and grandfathers had been in possession of a distinct, well-defined parcel

or tract of land anywhere, to the exclusion of all other persons?

The claim by the plaintiff Fianza, and by Balpiedad that the posts marking the perimeter of the lands in Exhibit C marked the boundaries of the land originally claimed by Fianza, is in direct conflict with the testimony of Wagner.

With reference to these posts we have the testimony also of Reavis, the defendant, who had lived in the vicinity of Antamoc from the month of February, 1901. He said (Rec., p. 90) in answer to a question with reference to the time when the fourteen posts were placed upon the land represented by Exhibit C:

> *"They represent stakes set in the ground after the injunction was served on me in this case.*
>
> "Q. Do you know who put them there?
>
> "A. *Fianza told me that he put them there.*
>
> "Q. *This was after the injunction was served upon you?*
>
> "A. *Yes, sir.*
>
> "Q. Was there any survey made of that land? If so, when?
>
> "A. A short time after the posts were put there Fianza came there with a Filipino surveyor and had him to go round these posts. It is the same surveyor who came on the stand here and testified and the same one who made the plat on the paper.
>
> "Q. Were these the stakes referred to by witnesses as the fourteen stakes pointed out to you by Wagner, Lawrence, and Fianza; were those stakes there before the injunction was issued?
>
> "A. Not that I saw.
>
> "Q. Were you around the land so as to see them if they had been there?
>
> "A. Yes, sir.

"Q. So when Wagner placed these posts there in 1902, did you see them up to three days ago when they went to them?

"A. They were not there.

"Q. Did you see any stakes that Wagner testified to as having been placed there by him on the 9th of May, 1902?

"A. Yes sir; when we went over there I saw them, about three days ago.

"Q. How many did he show you that he had placed there?

"A. He showed me one than he was positive of having placed there."

This testimony, together with that of Fianza, Balpiedad, and Wagner, seems to make it clear beyond peradventure of doubt that the land claimed in Exhibit C is not the land which Fianza pointed out to Wagner as his land in the month of May, 1902.

It will be remembered that *all* of the witnesses of the plaintiffs who attempted in any way to designate a particular tract of land *gave their testimony before the Balpiedad survey was offered in evidence, and none* of them made a more definite or special description of the land in question than to say that the said land was in the mountain of Antamoc. The only testimony, therefore, which attempts in any way to describe the particular land in question is that of Fianza, Balpiedad, and Wagner, and it must be remembered that Wagner and Balpiedad each received whatever information they had concerning the identity of the land in question from Fianza himself.

Referring again to the testimony of Fianza and to the fourteen posts as marking the perimeter of the land in question, he testified (Rec., p. 84) that such boundaries are the same as the land which his father owned. This same witness also stated (Rec., p. 7) that the four posts placed by Wagner on the 9th of May, 1902, marked the perimeter of his claim.

Neither will it be forgotten that according to the finding of the court the Balpiedad survey included nearly three times the area which the Wagner plan included. The Wagner plan was a parallelogram; the Balpiedad plan is octagonal in form, four of whose dimensions are 1,542, 1,075, 8,887, and 742 feet, one side being without any dimension whatsoever. *These surveys represented entirely different tracts of land, both sworn to by the plaintiff Fianza as representing his mines*. Which of these contradictory statements must the court accept?

When it appeared during the trial of said cause that the tract of land marked by Wagner and that surveyed by Balpiedad were different tracts of land, the attorney for the defendant attempted to ascertain which of the two tracts the plaintiff Fianza actually claimed and to that end asked the following question:

"Q. *What mines do you claim? That which you claim by this suit* (Wagner's plan) *or that which was measured by Balpiedad?"* Apparently, in view of the conflict between the lands pointed out by Fianza to Wagner and the lands pointed out to Balpiedad, a perfectly proper question, and one which, had the plaintiff been permitted to answer, might have made clear this conflict. However, the attorney for the plaintiff objected to the question and the court refused to allow Fianza to answer the same.

The trial court and the majority opinion in this court for some reason have accepted the Balpiedad plan as representing the mines claimed by the plaintiffs. The fact is to be clearly borne in mind that *all* of plaintiffs' witnesses, with the exception of Fianza, *who pretended to testify* as to the mine claimed by Dominguez and Fianza, testified before the Balpiedad plan was presented. Aside from the fact that their declarations refer to mines in Antamoc, such declarations could not, under any theory of the case, *serve to identify the tract described in the Balpiedad survey*.

As to Fianza himself he pretended to identify the land claimed by his father with the Balpiedad survey. We have already noted that there is a hopeless conflict in his statements, as he identifies in one place the Wagner plan and in another place the Balpiedad plan as being the land claimed. And, moreover, in view of the testimony of Wagner and Reavis, we are of the opinion that Fianza *deliberately perjured himself* (Rec., p. 85) in testifying that the posts appearing on the Balpiedad plan were placed there by Wagner. *He admitted to Reavis that he had placed the posts there himself*.

We feel justified in the conclusion, therefore, that the only testimony in the whole record identifying the lands claimed by the plaintiffs with the land decreed by the court is the following question and answer, asked of Fianza (Rec., p. 84):

> "Q. Were the boundaries that you showed Balpiedad the same that were the boundaries of the land when your father owned it?
>
> "A. Yes, sir; the boundaries were the same that my father showed me."

If it is true that the father of Fianza had shown the boundaries of the Balpiedad plan to him and these were the real boundaries of his claim, why did not he, Fianza, point out these same boundaries to Wagner in May, 1902, nearly two years prior to the Balpiedad survey?

It results, therefore, that the decision is rendered in favor of the plaintiffs upon the testimony of one witness, whose declarations are conflicting and who has deliberately perjured himself.

It is contended further that even accepting Exhibit C as representing the lands in question, even then the *demarcation of the tract of land is not sufficient upon which to issue an injunction to prevent trespass*. There is nothing in the description of the lands marked in Exhibit C by which even a surveyor might go upon that part of the *world* and locate it exactly, so as to be able to say to all comers: This is the particular tract of land of the defendant and all others are enjoined from entering thereon.

It is contended that Exhibit C does not constitute a sufficient description to locate this property. The plan itself is not accompanied by a technical description of any kind; the only description appears in the testimony of Balpiedad (Rec., pp. 74-78). The vital point in any plan is the starting point. The only evidence of record showing the starting point of this plan is as follows (Rec., p. 74):

> "Q. Where did you commence the measurements?
>
> "A. We followed the Ampasit road and started from the post we found near that road, within a distance of ten meters of the side of the road towards the summit of the mountain.
>
> "Q. Can you describe more specifically the point of departure?
>
> "A. Yes, sir.
>
> "Q. Well, describe it, then.
>
> "A. This post is held in place by stones piled about its base, and if it has not been removed there is another longer post, which Fianza placed there so that it could be seen from a distance."

No surveyor, much less a layman, could locate with certainty the starting point from this

description.

It appears further that the notes from which this plan (Exhibit C) was made and testimony given were not the original notes. The following appears of record (Rec., p. 80):

> "Q. Why did you destroy the data which you made in this particular case when it was your custom to keep all data within your trunk?
>
> "A. Because they were not exact and besides they were all transferred to this paper and therefore I tore them up."

From this it expressly appears by the testimony of Balpiedad, that the notes which he made on the ground at the time of the survey *"were not exact"* and that these (inexact notes) were all transferred to this paper. We must conclude, then, that even Exhibit C, according to the testimony of Balpiedad himself (Rec., p. 84), is not a correct plan. Both the trial court and the majority opinion of this court found that the tract owned by Fianza is of irregular boundaries and contains about 183,000 square meters. There is not a scintilla of evidence in the record giving even approximately the area of Exhibit C.

We are of the opinion that the foregoing excerpts from the record clearly show that the plaintiffs failed to prove that they occupied *for any period* any well-defined, ascertainable tract of land in the mountain of Antamoc, to the exclusion of all other persons. The testimony of all of the witnesses for the plaintiffs, except Fianza himself, refer to the land in question simply as *the mines of Antamoc*. Several witnesses testified that Antamoc was a mountain and that the whole mountain was known as Antamoc and that all the land in said mountain was mineral land.

It being clearly established, therefore, that Antamoc is a mountain and is mineral land, a declaration that Dominguez or Fianza claimed mines in Antamoc, no more identifies the location of such mines with the particular mines now claimed by the plaintiffs than would a declaration, that "John Doe" claimed mines in the mountains of China or in the gold fields of Colorado, authorize said "John Doe" to claim title to a particular mine within such district, or to receive the aid of the strong arm of the law to prevent all comers from entering upon any particular square foot of said land. There might be some reason for so holding if the particular tract of land claimed constituted the only mines in Antamoc; it appears, however, that the whole mountain of Antamoc is mineral bearing, and that there are many mines

there. Evidence that the plaintiffs claim mines "in Antamoc" is absolutely no proof of ownership of any particular tract within the limits of said mountain. *If the plaintiffs can claim the lands described in Exhibit C to-day, to the exclusion of all other persons whomsoever, then they can, under the same proof, contest the right of any other mine now open or hereafter to be opened in said mountain*.

It appears from the testimony that Clyde and other American miners also located claims in Antamoc; some of them adjoining the alleged lands in dispute, while many witnesses testified that there are Igorot excavations over the whole of Antamoc mountain. It is believed that if the plaintiff Fianza can claim this particular tract of land in question that he can then successfully contest the right of any locater of a mine in the mountain of Antamoc, for the reason that the testimony of all of the witnesses was that Fianza had mines in Antamoc, with no further or more definite description.

The majority opinion (p. 14), in referring to the testimony of the American miners as to the mining customs of the Igorots, says:

> "In no event could this general testimony overcome the positive testimony of plaintiffs' witnesses, many having been presented who testified that the land was worked exclusively by Fianza and his ancestors and that other people were kept off."

We have examined the record in vain to find even a shred of evidence supporting this statement. There is not a *scintilla of evidence* in the record, which we have found, *to show* that Fianza and his predecessors *ever kept anybody off* of this alleged tract of land or of any other in the mountain of Antamoc. Aside from the fact that these witnesses did not identify any land claimed in this suit, they did not state that Dominguez claimed the exclusive right to the land in Antamoc, *or that he kept other people off*. They made their statements no stronger than that Dominguez "owned mines in Antamoc," without saying whether such mines were in one part or another part of said mountain. The only evidence in the whole record which purports to identify the land claimed by the plaintiffs and their predecessors with that surveyed by Wagner and Balpiedad is the testimony of one witness, Fianza, an interested party, and it has been shown that he perjured himself.

Upon the question of the exclusive occupation by the plaintiffs of any particular tract of land, *it is confidently asserted that the plaintiff, Fianza, never attempted to exclude anyone*

from the use and occupation of any portion not only of the small tract of land here in question but of any part of said mountain of Antamoc. We will allow the record to support this statement:

Reavis testified:

> "Q. How long have you lived in Antamoc?
>
> "A. Since February, 1901.
>
> "Q. When did you arrive in the Philippine Islands?
>
> "A. In 1900; I believe in December.
>
> "Q. What experience have you had as a prospector?
>
> "A. Now about ten years or a little more.
>
> "Q. In what part of the United States did you prospect?
>
> "A. In New Mexico principally, Arizona, Colorado, and along the Rio Grande River in Texas.
>
> "Q. When did you arrive in this Province of Benguet?
>
> "A. I believe on the 1st of December 1900—that is, in Baguio.
>
> "Q. Did you go to Antamoc?
>
> "A. Yes, sir.
>
> "Q. Did you do any prospecting?
>
> "A. Yes, sir.
>
> "Q. Where?
>
> "A. I commenced here and went to Bataan creek and I prospected the country all about.
>
> "Q. When did you arrive at Antamoc?

“A. February, 1901.

“Q. What, if anything, did you do there in reference to prospecting?

“A. I went over the country, broke up rocks, and looked up in the gulches.

“Q. Where?

“A. All over the Antamoc Mountain and in the river and all about.

“Q Did you make any locations?

“A. Yes, sir.

“Q. Where?

“A. In Antamoc.

“Q. What, if anything, did you do after locating claims at Antamoc?

“A. I located other claims, put up stakes, made out location papers, got them recorded by the recorder, Clyde, who lived in Antamoc.

“Q. How was he made recorder?

“A. By election of the miners.

“Q. Where?

“A. In Antamoc—what they called the Antamoc district.

“Q. Now, Mr. Reavis, what claims were located by you in March, 1901; what were the names of the locations?

“A. Arizona, Texas, Mexico, New Mexico, Otec, and Apex.

“Q. State to the court just what you did when you went to Antamoc in the early part of 1901.

“A. We went to Antamoc and found ground which to my judgment was mineral; I put up my stakes; as I said before, I had them put on record and proceeded to do

my assessment work as we would have done in the United States according to our rules.

“Q. Was there anyone about the place when you located?

“A. Yes, sir; Igorots and some Americans on the river.

“Q. Did you make any inquiry in regard to the land around there?

“A. I learned when we went to the creek that it was all located on the west side of the creek and down to the bank on the south side of the river and the prospectors all believe that the other side of the river was the ground and land owned by Mr. Holman.

“Q. What inquiries, if any, did you make of the natives that were there?

“A. I made no inquiries of any of them, because I could not speak the language, but they told me voluntarily that that mountain belonged to Mr. Holman.

“Q. Referring to what mountain?

“A. Antamoc Mountain.

“Q. Have you been in possession of the ground located by you in March, 1901, since that time?

“A. Yes, sir.

“Q. Have you performed work thereon since that time continually?

“A. Yes, sir.

“Q. State whether or not you employed natives to assist in the development?

“A. Yes, sir.

“Q. How many?

“A. All of the natives that were living around me at the time.

“Q. Was there any objection made by anyone to your possession and working of

these claims?

“A. None at all.

“Q. When was the first objection, if any, made to your possessing and developing these claims?

“A. The first objection coming directly to me was when I got a paper from Governor Pack to come into Baguio in 1902.

“Q. *At any time prior to that date did the plaintiff Fianza or any of the other plaintiffs in any manner object to your possession of said claims or to your development of them?*

“A. No, sir.

“Q. Did the plaintiff, Fianza, or any of the other plaintiffs ever inform you or give you any information that they claimed any part of the claims which you had located and were in possession of?

“A. They did not.

“Q. What stakes, if any, were upon the claims when you located them?

“A. I found one small stake with ‘H. Holman, registered 1896,’ written in blue pencil on it.

“Q. Did you find any other stakes?

“A. I did not. The Igorot who showed me that one took me over to show me the others and when we got to where he said they were, there were gone. He said that the fire had burned them up.

“Q. Did you make a sufficient investigation of that ground to be able to state as to whether there were any other posts on that ground located by you?

“A. I have been over the ground more thoroughly than any Igorot in all his life and I never saw any stakes.

“Q. These stakes were placed there by H. Holman?

"A. Yes, sir; from what the Igorot showed me it would indicate that the post I had come to was the southwest corner post of Holman's claim."

William Knauber, upon the question of the claim of Fianza to any particular tract of land in Antamoc, says:

"Q. What is your occupation?

"A. Engineer.

"Q. Did you follow your occupation as a land engineer?

"A. Yes, sir; but in Colorado I was mining most of the time.

"Q. How many years' experience have you had in mining?

"A. Five years.

"Q. Were you ever in Benguet Province before?

"A. Yes, sir.

"Q. When?

"A. January, February, and March, 1900.

"Q. For what purpose?

"A. Mining and prospecting.

"Q. Do know the mining district of Antamoc?

"A. Yes, sir.

"Q. Were you there?

"A. Yes, sir.

"Q. When?

“A. On the 9th day of January, 1900, at the Antamoc mining claims.

“Q. Did you do any prospecting?

“A. Not to amount to anything; I was just looking around; that was all.

“Q. Did you make any inquiries as to whether or not there were any mining claims in Antamoc?

“A. Yes, sir; that is mostly what I went there for.

“Q. How did you make the inquiries?

“A. From the president of Itogon.

“Q. Do you remember the president by name?

“A. No, sir.

“Q. Do you know him by sight?

“A. If I should see him.

“Q. I will get you to look at Jose Fianza and get you to state if he was the president of Itogon?

“A. Yes, sir; he is the man; he was supposed to be the president; he went with us to the mining property.

“Q. Who was with you at the time you were at Antamoc inquiring for claims?

“A. It was a Spaniard by the name of Teodoro Miguel. He had lived around in this country for nine years.

“Q. What was said and done there [referring to the time when Fianza went with the witness to the mining property]?

“A. The Spaniard and I went to Itogon; we looked for the president or some one who knew about this mining property, who it belonged to, and who was supposed to own it. This man Fianza said he knew the property and knew it belonged to Mr. Holman. I asked him where it was and if he would go with us; so we went up

there with Fianza; I asked Fianza to show us Mr. Holman's stakes or lines; then he said, 'Go over there further,' and he pointed over the ravine and we went across the river and up to the top of the hill where the slide was and from up there he showed us the stake and pointed to other different points down the river; one was up near the river and another off a ways from the ravine which runs up the slide, as he pointed north or northeast to the different stakes there; then I asked him if Mr. Holman was supposed to own all this property as a mining claim and he said 'yes; it was all Mr. Holman's property.'

"Q. Do you remember the date of that conversation?

"A. On the 9th of January, 1900.

"Q. This property was at Antamoc?

"A. Yes, sir; from the top of the hill above the slide.

"Q. Did Fianza in that conversation make any claim to that property to you?

"A. No, sir.

"Q. Did he make any claim to you of any mining claims?

"A. No, sir.

"Q. Did the Igorot Fianza tell you that he had any mining property in that part of Antamoc?

"A. No, sir.

"Q. What was his reason for going up there, then?

"A. To show us the property that belonged to Holman.

"Q. Did you pay him anything for going up there?

"A. No, sir."

Antonio Robiera testifying with reference to the ownership of the mines in Antamoc, said (p. 113):

"Q. Where do you live?

"A. La Trinidad. [This is a town located a few miles from Baguio in the Province of Benguet.]

"Q. How long have you lived in Trinidad?

"A. Since 1890.

"Q. What is your nationality?

"A. Spanish.

"Q. Are you acquainted with the Antamoc mining district?

"A. Yes, sir; I have been there several times (p. 115).

"Q. During any of your trips to the Antamoc mines or during your residence in Benguet Province, did you ever hear of Fianza owning any mines or claiming to own any mines?

"A. No, sir.

"Q. State if you know what was the general understanding among the inhabitants of Benguet Province as to the ownership of the mines at Antamoc?

"A. I never heard any rumors about the ownership of those mines.

"Q. State whether or not it was generally understood in this province that any person was free to go to these mines and obtain gold from them upon his own account.

"A. I did not hear that the mines were worked by anyone in particular, but what I do know is that everyone went there and worked and got out gold—that is, everyone who wanted to."

Continuing upon the same question, Francisco Velancio testified as follows:

"That he was 76 years old and had lived in the Province of Benguet since 1880;

that he was secretary of the province.

“Q. Do you know Fianza?

“A. Yes; I know him.

“Q. Did you ever live in Antamoc?

“A. Yes, sir.

“Q. When were you living in Antamoc?

“A. Since 1894.

“Q. Do you know whether there are any mines in Antamoc?

“A. Yes, sir; there are.

“Q. Did you ever hear or know of Fianza claiming to be the owner of any mines at Antamoc during Spanish times?

“A. I never heard.

“Q. Who worked in those mines during Spanish times?

“A. The Igorots who lived there and any other Igorots who wanted to work there.

“Q. Could any Igorot who wanted to work there in those mines to take out gold for his own use do so?

“A. Some Igorots from Tublay and Kaybayan also go there to get gold; I think they come because I never heard that anyone prohibited them from doing so.

“Q. During Spanish times did any one person claim to own these mines?

“A. I never observed any one person prohibiting it.

“Q. Do you know Mr. Hans Holman?

“A. Yes, sir.

“Q. Did he make any claim to any mines in Antamoc?

“A. I have been told so by him; yes, sir.

“Q. When?

“A. Before the arrival of the Americans.

“Q. State whether or not any papers were prepared by you for Mr. Holman relating to any mining claims before the Americans arrived here.

“A. Some papers Mr. Holman wanted me to give Fianza for signature.

“Q. Did you sign any papers for Mr. Holman?

“A. Yes, sir.

“Q. Were these papers taken to Fianza for his signature?

“A. Yes, sir; Mr. Holman took these papers himself to get Fianza’s signature.

“Q. Did you see these papers after he had taken them to Fianza for his signature?

“A. Yes, sir.

“Q. Do you know what those papers were about?

“A. Yes, sir.

“Q. State if you know what the said papers related to.

“A. It related to mines.

“Q. Do you know what mines it related to?

“A. The Antamoc mines.

“Q. Did you buy any gold in Antamoc when you were living there?

“A. Yes, sir.

“Q. Do you know whether the mines in Antamoc had any particular owners during Spanish times or not?

“A. I never heard of any owners of those mines.

“Q. Did you ever hear of Fianza being the owner of or claiming to be the owner of those mines during Spanish times?

“A. No, sir.

“Q. Did you ever hear of Fianza’s father, Dominguez, claiming to be the owner of these mines during Spanish times?

“A. No, sir; no one that I know of.

“Q. Did you buy gold of the Antamoc mines?

“A. Yes, sir; I bought gold.

“Q. From whom did you buy gold?

“A. I can not fix the names of the Igorots who sold me gold; if any Igorot wanted to pay me 5 or 10 cents in gold, I exchanged salt and clothing with them for their gold.

“Q. Did they get that gold from the mines of Antamoc?

“A. Some Igorots got it from that mine and sometimes they got it from the rivers.

“Q. Did you buy any gold from the father of Fianza?

“A. No, sir.

“Q. Did you buy any gold from Fianza?

“A. No, sir.

“Q. What office have you held since 1894 under the Government?

“A. I was secretary in Atoc in 1894, ’95, and ’96.

“Q. Were you ever secretary of Baguio?

“A. Yes, sir.

"Q. When?

"A. In 1898."

Holman testified upon this question as follows:

"Q. How long have you lived in the Philippine Islands?

"A. Ten years.

"Q. Did you ever live in Benguet Province?

"A. Yes, sir.

"Q. When did you go to Benguet Province?

"A. In 1895.

"Q. Do you know the Antamoc mining district in this province?

"A. We denounced that mine; the papers which we made out were burned up in the *comandancia* during the Spanish government; we commenced the denouncement of that mine in 1896.

"Q. What property did you denounce and how much of it and where in Antamoc?

"A. One hundred and twenty square meters is what we denounced.

"Q. What part of Antamoc Mountain did your claim cover?

"A. On the side of the mountain, on the steep slope where there were many holes.

"Q. Do you know where the barrio of Antamoc is?

"A. Yes, sir.

"Q. Do you know where the barrio of Ampasit is?

"A. Yes, sir.

“Q. Do you know the place on the side of the hill called ‘the slide?’

“A. Yes, sir.

“Q. Did your claim include the whole of that slide?

“A. Yes, sir.

“Q. Do you know the plaintiff Fianza?

“A. Yes, sir.

“Q. How long have you known him?

“A. It has been ten years.

“Q. Do you know whether or not he knew that you had commenced denunciation proceedings in regard to that mine at Antamoc?

“A. Yes, sir; because he himself signed the papers saying it was mine.

“Q. When did he sign the papers?

“A. I don’t remember what date it was, because my father has taken the papers away with him; the witness who was just on the stand also signed the same here in the old tribunal in the room corresponding to this one.

“Q. Did Fianza pretend to be the owner of those mines at that time?

“A. No, sir; he never did say that; whoever liked could get gold from that mine; anyone could get gold from that mine; when I arrived there he did not complain; he only said they were mine (Holman’s). You may go to Itogon and to Antamoc and everyone everywhere will tell you that they are mine.

“Q. I hand you plaintiffs’ Exhibit C which purports to be a plan of the mine claimed in this suit by Fianza at Antamoc, which purports to include the place referred to by you as the slide. State to what extent your denunciation took this in.

“A. All above the river [placing his hand on the map]. The stakes are there yet if

they have not been torn down. The same people there at Antamoc put them there.

“Q. Did you put up any stakes of any kind?

“A. We changed these stakes in 1898; I went there three times; I went there in 1902; we have measured these mines three times and we took Herman, the engineer, with us; it is possible he has the plan with him.

“Q. Did the Igorots generally know that you had denounced mines at Antamoc?

“A. I should say so because they themselves say so.

“Q. Do you know when the engineer Herman measured your claim?

“A. I don’t remember the year, but it was a long time ago.

“Q. Who helped you to lay off these mines?

“A. Herman.

“Q. How many excavations did you find in the mine when you went there?

“A. I think five or six holes.

“Q. When you were there the first time, was it, that Fianza signed the papers stating that you were the owner of the mines individually?

“A. No, sir; afterwards.

“Q. How long after was it that Fianza signed these papers?

“A. In 1897.

“Q. Did any other Igorot sign that paper of a similar paper besides?

“A. Two chiefs—rich men.

“Q. Who else signed the documents?

“A. Jose Cariño, Acoup; I don’t remember the others.

"Q. Is this paper, plaintiffs' Exhibit C, the plan of the ground you located?

"A. It is.

"Q. How do you know it is the same land that you denounced?

"A. I went there myself.

"Q. By what mark do you recognize that as the same land?

"A. It is the same on which I placed stakes.

"Q. Were your stakes placed in the same places as the stakes indicated on this map?

"A. Yes, sir.

"Q. Do you remember Mr. Reavis going to you before he made a location in the Antamoc property and asking you whether or not you had claims on that property?

"A. Yes, sir; I remember.

"Q. What did you tell him?

"A. 'Take care, whether you want to work or not, if you like to work, you work; I don't care about the mines.'

"Q. Did you put the stakes on the Antamoc Mountain yourself or did an official do this for you?

"A. No, sir; I myself with the Igorots of Antamoc."

H. Clay Clyde, in testifying as to the exclusive use by the plaintiff of the land in question, said:

"Q. When did you first go to the Antamoc mining district?

"A. July, 1900.

“Q. For what purpose?

“A. To prospect.

“Q. Did you prospect generally over the Antamoc district?

“A. Yes, sir; I looked around quite a bit. The Igorots told me that it belonged to Mr. Holman, so I looked around and as they had all the land I came back to my camp; and afterwards in December of the same year I went there to look it over again and I made some locations in January, 1901.

“Q. [Handing witness paper marked for identification ‘J.’] Assuming this to be an approximately accurate diagram of the Antamoc mining district, state whether or not you saw a post with a cow’s head on it near the junction of the trails leading to Gamoc, Itogon, and Baguio.

“A. Yes, sir; I saw that stake there.

“Q. When did you first see that?

“A. The first time I went there in July, 1900.

“Q. State whether or not you saw any other mark in the way of a tree with some stones in the branches of it.

“A. The Igorots showed me that mark in December, 1900; it was a tree on the side of the hill, perhaps a little south of east from my house. I marked my house with the letter ‘C.’

“Q. What did the Igorot say they represented?

“A. He said it represented the limits of Holman’s claim and pointed off in the direction eastward toward another stake, so I never interfered upon that ground.

“Q. At the time the Igorot pointed out these marks to you, he stated that they were Holman’s claims. Did you believe it belonged to Holman?

“A. Yes, sir.

“Q. Is that the reason you didn’t locate claims there?

“A. Yes, sir.

“Q. Do you know where the claims of the defendant Reavis were located?

“A. Yes, sir.

“Q. State whether or not the claims claimed by the defendant Reavis were within the boundaries of the ground described to you by the Igorot as being the claim of Holman?

“A. Yes, sir.

“Q. When did you first know that the plaintiff Fianza claimed any mining property in that vicinity?

“A. About the latter part of June or July, 1902, just before the mining laws came out.

“Q. Were you in the neighborhood of these mines prior to that time?

“A. Yes, sir.

“Q. Did you hear any Igorot or any person say or intimate that Fianza had any claims there?

“A. No; I never heard of anyone.

“Q. Do you know whether or not the defendant Reavis has been in possession of the mining claim staked out by him, as testified to by you, in March, 1901?

“A. Yes, sir.

“Q. Has he worked these mines since then?

“A. Yes, sir.

“Q. Does he live on any of them?

“A. Yes, sir.”

Perry Iams testified upon the same question as follows:

> "Q. When did you first visit the district—when the Americans attempted to organize what is known as the Antamoc mining district?
>
> "A. The latter part of December, 1900.
>
> "Q. Do you know where the defendant Reavis has located claims there?
>
> "A. Yes, sir.
>
> "Q. Did you prospect over that country?
>
> "A. I went over the country but I did not prospect it.
>
> "Q. Why not?
>
> "A. The secretary of the barrio there, when we went over there the first time, told me that the property there belonged to Mr. Holman, so I didn't waste any time prospecting there.
>
> "Q. Did you make any attempt to find out what property Holman claimed there?
>
> "A. Yes, sir; I asked the secretary to show me the extent of Holman's claim and he sent an Igorot with me to show me the stakes which Holman had placed up there.
>
> "Q. Do you know what ground was pointed out to you as being claimed by Holman at that time?
>
> "A. Yes, sir; I remember very distinctly that ground.
>
> "Q. Point out to the court the ground that was pointed out to you as being Holman's claim, with reference to the claim as now held and claimed by the defendant Reavis.
>
> "A. Well, Mr. Reavis's claim would be inside the lines that they claimed belonged to Mr. Holman at that time.
>
> "Q. The whole of his claim would be inside?

“A. Yes, sir; all of his claim would be inside the lines.

“Q. Did you see any work done there south of the river, near the junction of the trails that run to Gamoc, Itogon, and Baguio?

“A. Yes, sir.

“Q. What kind of a post did you see there?

“A. The post was 7 or 8 feet high, with a cow’s head fixed onto it.

“Q. Was there any other sign seen by you?

“A. Yes, sir; a tree north of there, or a little west of north, and locked up in the branches of the tree were some stones, and they told me it was the other corner of Mr. Holman’s ground.

“Q. Who called your attention to these points?

“A. The Igorot who had showed to me Mr. Holman’s claim.

“Q. Did he indicate any other point?

“A. He showed me three stakes and then pointed to where the other corner was.

“Q. Do you know when Mr. Reavis located there?

“A. Yes, sir.

“Q. When?

“A. I think he located his first claim there in March, 1901.

“Q. Do you know whether or not he staked that out in 1901?

“A. Yes, sir.

“Q. How do you know?

“A. I saw his stakes there.

“Q. Did any Igorot, during the time you were there, ever claim any mining

property?

“A. No, sir.

“Q. Did any Igorot claim any mining property there of you or within your knowledge?

“A. No, sir.

“Q. Do you know the plaintiff Fianza?

“A. Yes, sir.

“Q. When did you first learn that Fianza claimed any mining property in that district?

“A. I don’t remember the exact date; it was quite a long time after I had been living at Antamoc—about a year after—before I knew he ever claimed any mining land there.

“Q. Was Mr. Reavis in possession of mining claims there many months before you heard of Fianza claiming any interest in that property?

“A. Yes, sir.

“Q. During that time did you see any Igorots working for Mr. Reavis?

“A. Yes, sir.

“Q. How long did you work for him (Mr. Reavis)?

“A. About two weeks.

“Q. What kind of work were you doing for Mr. Reavis?

“A. Driving tunnels.

“Q. Where?

“A. On his claim in Antamoc.

"Q. Can you state whether or not that work was done on the same property which he now claims?

"A. Yes, sir; it was the same.

"Q. Did anyone object to you—did Mr. Reavis or any of his other employees—working on said claim?

"A. No, sir.

"Q. Did you work openly and above board during that time?

"A. Yes, sir.

"Q. You were working during the daytime?

"A. Yes, sir.

"Q. Where were you living at that time?

"A. In Antamoc.

"Q. Where was Reavis living at that time?

"A. On his claim in the same house he is living in now."

Fred Steuber testified upon the same question as follows:

"Q. Have you been down to the Antamoc district?

"A. I came there in October, 1901.

"Q. What did you do there in 1901?

"A. I was working for Mr. Reavis in the mine—at the gold mines.

"Q. Where was Mr. Reavis mining at that time?

"A. Antamoc.

"Q. How long did you work for him?

"A. About three months.

"Q. Were there any other persons working for him while you were working for him?

"A. Yes, sir; Igorots.

"Q. Do you know the claims he is now claiming?

"A. Yes, sir.

"Q. Is that the same ground that you were working in 1901?

"A. Yes, sir.

"Q. During the time you were working for Mr. Reavis did anyone object to his working those claims?

"A. No, sir; not to my knowledge.

"Q. During that time did you hear any Igorot claiming any part of those mines or claims?

"A. No, sir; I did not.

"Q. Do you know anything about what was alleged to be Holman's claim there?

"A. From what I understood from the Igorots there, they said that Mr. Reavis was foolish to work those mines as they belonged to Holman; I did not know Holman at the time; I did not hear them say that they belonged to any Igorots there."

Nelson Peterson, testifying upon the same question, said:

"Q. Are you acquainted with the district known as the Antamoc mining district?

"A. Yes, sir.

"Q. When did you go there?

"A. In the year 1901, in February.

"Q. What were you doing there?

"A. Prospecting; locating claims.

"Q. While you were prospecting there was any mention made of any property interests there?

"A. Yes, sir; I understood that Holman had some property interests there.

"Q. Do you know whether Mr. Reavis has any mining claims at the present time?

"A. Yes, sir.

"Q. State where the property is which was pointed out to you as Holman's property, with reference to the claims owned by Reavis.

"A. It covers practically the same property.

"Q. Do you know where Reavis lives?

"A. Yes, sir.

"Q. Does he live on any part of the claims he staked out in the early part of 1901?

"A. Yes, sir.

H. P. Whitmarsh testified upon the same question as follows:

"Q. What official position, if any, did you ever occupy in the Province of Benguet?

"A. First governor under American occupation.

"Q. Were you in Benguet Province before you were appointed governor?

"A. Yes, sir; nearly a year before.

"Q. State as near as you can when you first came to Baguio?

“A. The latter part of December, 1899, or the beginning of January, 1900.

“Q. Do you know the district known as the Antamoc mining district?

“A. Yes, sir.

“Q. Did you ever go there?

“A. Yes, sir; I went there to get information about the mines of the country.

“Q. Do you know the plaintiff Fianza?

“A. Yes, sir.

“Q. State whether or not you saw him when you first came to this province.

“A. I stayed with him in Antamoc when I first went there.

“Q. What position did he occupy at that time?

“A. I understood he was president.

“Q. Did you ever talk with him in reference to the mines in Antamoc?

“A. All about the mines in the vicinity; he advised me to go to Antamoc to look at them.

“Q. What did he say in reference to the Antamoc mines?

“A. He said that Holman owned the place where they were.

“Q. Did Fianza at that time tell you that he owned any part of that mine?

“A. No, sir.

“Q. Did you go to him for the purpose of obtaining information regarding these mines?

“A. I asked him about them the time I came back to Itogon; I went there first and then came back and stayed with Fianza and then he told me that Holman had denounced some claims there.

"Q. Did you hear any other person say that Holman had held mining property there or had denounced some claims?

"A. His father wrote me about it and some Igorot whom I met in Antamoc pointed out the hill of Antamoc as belonging to Holman, and Holman told me so himself.

"Q. Did they point out that hill on your first trip there?

"A. Yes, sir.

"Q. Do you know the defendant Reavis?

"A. Yes, sir.

"Q. Do you remember when he first came to Baguio?

"A. Yes, sir; in the fall of 1900.

"Q. Have you any personal knowledge of his locating any mines at Antamoc?

"A. Yes, sir.

"Q. Do you know when they were located?

"A. In the beginning of 1901.

"Q. When did you first learn of Fianza making claim to mines in Antamoc?

"A. When he came to the tribunal and spoke of it.

"Q. When was that?

"A. As I remember some time about June or July, 1901, I should say—while I was governor.

"Q. After you had seen the stakes pointed out to you by Mr. Reavis as his claim?

"A. Yes, sir."

J. E. Kelly testified upon the same question as follows:

“Q. What is your occupation?

“A. Mining.

“Q. How long have you resided at Bua?

“A. Three years.

“Q. Have you been engaged in the occupation of mining during all that time?

“A. Yes, sir.

“Q. When did you first enter the Province of Benguet?

“A. About January, 1901.

“Q. For what purpose did you go there at that time?

“A. To mine.

“Q. And to what particular parts of the province did you go?

“A. Pretty much all over the province.

“Q. Are you familiar with the district known as Antamoc?

“A. Yes, sir.

“Q. Did you visit that district on that trip in January, 1901?

“A. Yes, sir.

“Q. Did you become familiar with the mining conditions at Antamoc at that time?

“A. Yes, sir.

“Q. Are you familiar with the property that is now claimed by J. F. Reavis under the mining location staked by him?

“A. Yes, sir.

“Q. Did you become familiar with that property in January, 1901?

“A. Yes, sir.

“Q. Will you state what was the condition of that property when you first became familiar with it?

“A. When I first became familiar with it there were some natives working there who were, as I was told, working for Holman; that is, the gold they recovered was to be turned over to Holman and they were to receive so much per ounce for every ounce they recovered.

“Q. Do you know Mr. Holman?

“A. I know his father.

“Q. When did you become acquainted with his father?

“A. In March or April, 1901.

“Q. In relation to what matter did you become acquainted with him?

“A. I went to see Mr. Holman with a view to purchasing his Antamoc holdings.

“Q. What, if anything, transpired at that conference with Holman?

“A. I asked him with reference to his holdings in the Antamoc district, and he told me that he had a mine there that his brother had been looking after for him—no, not his brother, his son rather. I asked him if the property was for sale and he said that it was; when I asked him what the price was I don’t remember now just what figure he did place on it, but it was out of the question and I told him I couldn’t consider it. Some time later he sent for me and gave me a more reasonable price. I questioned him then in regard to the title; he told me that he had secured his first papers on the mines and would have had the final papers had it not been for the Spanish-American war. He also showed me the report made by Mr. Herman, the German mining engineer, who was in Manila at that time. In this report Herman advised Holman to raise $100,000 gold for prospecting purposes on the Antamoc mines. I learned that the property had been restaked by the Americans, after that, so I dropped it and had nothing more to do with it.

"Q. Are you familiar with the location of the lands concerning which you negotiated with Mr. Holman? Do you know what mines they were that he was offering you?

"A. Yes, sir.

"Q. Do you know what they are? Do you know just where they lie? That is what I mean by being familiar with their location.

"A. Yes, sir.

"Q. Where do they lie with reference to the mining lands which are claimed by Mr. Reavis?

"A. Practically the same ground.

"Q. So far as you know, then, Mr. Holman was the undisputed owner of the mines in question?

"A. Yes, sir; so far as I learned in the district.

"Q. Do you know Jose Fianza?

"A. Yes, sir.

"Q. How long have you known him?

"A. Three years.

"Q. Did you meet him during your trip in January, 1901?

"A. No, sir; I did not.

"Q. When did you first meet him?

"A. I may have met him later on in January, 1901—no; I met him in November, 1902.

"Q. Then Fianza was not in possession of the Antamoc mines in January, 1901?

"A. Not that I ever heard of; I never knew anything of it.

"Q. When you met Jose Fianza, between that time and the present time, have you discussed mining matters in the Province of Benguet with him?

"A. Not anything further than that Mr. Fianza, when Governor Pack sent his private secretary to locate this claim of Reavis, they came to my place. They went down and located the ground, staked it out, and returned to Baguio to the recorder's office to have it recorded. Fianza, on his way home, came by my place and stopped and offered me the claim that he had just located—or did not offer it to me; he told me it was for sale for $25,000.

"Q. Was that the first time that you knew of Fianza having a claim on any mine at Antamoc?

"A. Yes, sir.

"Q. When was this, with reference to the location of Reavis's claim? Was it before or after?

"A. I should judge it was a year or such a matter after.

"Q. You are very positive it was after and not before?

"A. I am very positive it was more than a year after.

"Q. Had you known Fianza previous to this time?

"A. Yes, sir.

"Q. Had he ever claimed to be the owner of these Antamoc mines previous to this time?

"A. Never."

It is confidently contended that a careful reading of the testimony of the witnesses quoted above will justify the following propositions:

First. That the plaintiff Fianza prior to the commencement of this action did not claim or pretend to claim the *exclusive right* to occupy any particular tract or parcel of land in the mountain of Antamoc.

Second. That he made no effort to prevent the working and occupation by anyone of any mine in said mountain.

Third. That Holman took possession of a well-defined tract of land in said mountain, covering the present claims of the defendant, in the year 1896 without any objection or protest from the plaintiff Fianza or any of the other coplaintiffs.

Fourth. That the defendant, Reavis, found the lands or claims now in question unoccupied by anyone in the early part of the year 1901, and that he took possession of the same *peaceably, without protest* or *objection* from *the plaintiffs or any one of them*.

Fifth. That neither the plaintiff Fianza nor any of the other plaintiffs attempted to occupy the particular tract or parcel of land in question or any other tract or parcel of land in the mountain of Antamoc for mining purposes, or for any other purpose, *to the exclusion of all other* persons.

The defendant did not dispossess the plaintiffs. The plaintiffs were not in possession of the particular tract or parcel of land at the time the defendant took possession. The lower court, upon this question, made the following finding of fact (bill of exception, p. 33): "The court finds that the defendant, John F. Reavis, entered upon the mines owned and claimed by the plaintiffs in the year 1901, and staked out his three claims thereon, *under the honest belief that the same was included in an abandoned, forfeited Spanish grant of one Hans Holman, and that at the time of his first entry thereon, and the setting of his stakes he had no actual knowledge that the Igorots, who were then living upon the lands, claimed the ownership of said mines.*"

The lower court makes the further finding of fact in reference to the entry of the defendant upon the lands in question (bill of exceptions, p. 24): "In the month of March, 1901, the *defendant entered upon the lands* embraced in and next to the mines of the said plaintiffs, *upon the information that said mines of the plaintiffs had been located under the Spanish Mining Law by one Hans Holman, in the year 1896, and that said mine and mines were abandoned by said Hans Holman, and that they were vacant mineral and mining lands, proceeded to stake and locate these claims under the mining laws in force in the United States.*"

The lower court makes the statement that the *plaintiff immediately protested* to the defendant against his occupation of said mines. It is confidently asserted that there is *not a single word of proof in the record to support this finding of fact*. The defendant states in his

testimony that the plaintiff *never* made a protest to him personally in reference to his occupancy of the said mines. The plaintiff, Fianza, states in more than one instance that he protested to others; he does not state that he made a protest to the defendant. The lower court in its decision (bill of exceptions, p. 25) attempts to make it appear that in May, 1902, the defendant, by an agreement entered into before the governor of the Province of Benguet, recognized the rights of the plaintiff to the possession of the said lands. The attorney for the plaintiffs, however, in this court makes no such contention. He says: *"The agreement of May, 1902, did not, and was not intended to, affect the rights of either party."* A reading of the agreement entered into between the parties hereto before said governor fully justifies the statement of the attorney for the plaintiffs.

Notwithstanding the conclusions of the lower court, that the plaintiffs had occupied the particular tract of land to the exclusion of all others for so many years, it finds (bill of exceptions, p. 36) "that the plaintiffs in this case, during the entire time of the occupancy of these Islands by Spain and up to the date of the transfer of sovereignty to the United States (April 11, 1899), *did not gain, nor could they gain under the laws then in force, any right, title, or interest* to the mines in question nor the minerals therein by virtue of their possession, and the working of the same. The doctrine of prescription as against the Crown of Spain never applied to the mineral lands of the Philippine Islands."

It is clear, therefore, that any right of the plaintiff herein must have its origin in legislation had subsequent to the American occupation. The plaintiff had done nothing at any time up to the time of the conclusion of this action in the court below to comply with the act of Congress of July 1, 1902, which act was extended to the Philippine Islands on August 14, 1902, while upon the other hand, the defendant, honestly and in good faith, took *peaceable possession of the lands which he claims, and attempted and did comply with the rules and regulations applicable to mineral lands in the United States,* and immediately upon the promulgation of the act of Congress *took all of the steps required in said act to locate and record his claims*.

It is insisted that one who claims mineral lands under the act of Congress in force in these Islands must define the site of the ground with such certainty as may be necessary to prevent mistake on the part of the Government and on the part of citizens who may be asking a like benefit. This requirement placed upon all persons claiming mineral lands is but a reasonable and necessary requirement in order to justly administer the law, and therefore a description of the location of mineral lands which is *indefinite* and *uncertain*, for the purposes of holding a particular tract of land, is void. (Faxon *vs*. Bernard, 4 Fed. Rep., 702.)

The lower court in its decision (bill of exceptions, p. 19) admitted that the description of the lands in question was so *indefinite and uncertain that the court could not determine the exact nature of the conflict of lines and boundaries*. If the court, while it had the witnesses in its presence, could not determine the "exact nature of the conflict of lines and boundaries" of the lands in dispute, how can it justify its perpetual injunction which it granted against the defendant to prevent him from entering upon *any lands?* The court further says, in discussing the question of the title to the lands (bill of exceptions, p. 34): "The facts proved in this case fortunately are clear, specific, and definite in all respects, save one; that *one exception relates to the exact boundary lines of the opposing claimants in reference to their relations with each other."* It is submitted, therefore, that the evidence produced during the trial in said cause was not sufficient to show that the plaintiff had occupied a definite, well-defined tract of land to the exclusion of all others.

The plaintiff was not entitled to the benefit of the extraordinary, equitable remedy of injunction until he had proved that he was the owner of, or entitled to the possession of, a well-defined tract of land or mine, marked by certain lines and limits. He must first show that he had a right to the possession of said tract, not only against the Government of the Philippine Islands but as well against the defendant. (Gwillim *vs*. Donnellan, 115 U. S., 45.)

It is admitted that the defendant, some time after the promulgation of the act of Congress in these Islands, attempted to comply with the requirements thereof, in locating and recording his claim, and that the plaintiffs did nothing toward complying with the said law. It is also admitted that the plaintiffs, at the time of the transfer of Spanish sovereignty over the Philippine Islands to the United States, had no right, title, nor interest in the lands in question. Bearing these facts in mind, *it is contended that the mere naked possession of a mining claim upon public land is not sufficient to hold such claim as against subsequent location, made in pursuance of the law, and kept alive by a compliance therewith*.

In the present case the *plaintiffs attempted to stand upon the bare possession, without a location or record against the defendant, who had a location and record*. Under such circumstances there is no presumption of title in favor of the party in possession; but, if there was, *he who shows a valid location as against naked possession has the better right*. (Noyes *vs*. Black, 4 Montana, 534, 2 Pac. Rep., 769; Hopkins *vs*. Noyes, 2 Pac. Rep., 280; Le Lande *vs*. McDonald, 13 Pac. Rep., 349.)

The case of Belk *vs*. Meagher (104 U. S., 279) is cited by the majority opinion to support the doctrine laid down in its decision. A careful reading of that decision supports rather the

contention of the defendant. The court in that case said: "Under the provisions of the Revised Statutes relied on, Belk could not get a patent for the claim he attempted to locate unless he secured what is here made the equivalent of a valid location by actually holding and working for the requisite time. If he actually held possession and worked the claim long enough *and kept all others out* his right to a patent would be complete. He had no grant of any right of possession. His ultimate right to a patent depended entirely on his keeping himself in and all others out, *and if he was not actually in, he was in law, out."* In the same case the court continues: "A peaceful adverse entry, coupled with a right to hold the possession, which was thereby acquired, operated as an ouster which broke the continuity of his (Belk's) holding and deprived him of the title *he might have got* if he had kept in for the requisite length of time. *He had made no such location as prevented the lands from being, in law, vacant. Others had the right to enter for the purpose of taking them up if it could be done peaceably and without force."*

The following facts are admitted in the present case: First, that the plaintiffs, up to the time of the trial of said cause in the lower court, even though the law had been in force in these Islands for nearly two years, had made no attempt to definitely locate or record their claims; second, that the defendant entered upon the lands he claims *peaceably and without opposition;* third, that the defendant continued in possession of said land until the injunction was granted by the lower court; fourth, that immediately upon being informed of the requirements under the said act of Congress he complied therewith; fifth, that about eighteen months prior to the date of the said act of Congress the defendant had located the mines in question and performed the work upon them as required by the statutes of the United States.

Our next proposition is, that it was not the custom of the Igorots, a mountain tribe occupying the hills of the Province of Benguet, to occupy any parcel or tract of land, either for mining or for farming purposes, to the exclusion of other members of the same tribe. The majority opinion says that the plaintiff had worked the particular mines in question for fifty years or more. *There is no better proof of the fact that this statement is false than the fact that no excavations were found upon the said land at the time the defendant went there, which a half a dozen men might not have made in one day's operations.*

As to the custom of the Igorots to move from place to place and not to abide permanently in or occupy any particular place, we desire the record to answer. Fianza himself (record, p. 4) states: "The excavations were not the same; there were many different classes of excavations—some of 1 fathom depth and some 2 fathoms deep. Our custom is if we do not

find gold in 1 fathom or 2 fathoms, we work another place until we do find some."

Mateo Cariño (Igorot) (record, p. 40) said that the Igorots moved the holes to find the veins.

Reavis (record, p. 96) stated that the character of the mining done by the Igorots was what is called in the United States "gophering."

Clyde (record, p. 147) said: "The custom among the Igorots was to dig little holes and follow up little stringers where they could see a little free gold, and then they would put rocks on rocks and grind them out and sell it for what they could get for it. They never located any claims to property. They would go into the ground and work as long as any gold was there and then another Igorot would come along and find a little gold and he would continue, and any of them that came along would work at any place they wanted to; they never claimed ownership for any length of time; they would work in one place for one day and may be for one week; they would work in one place a week and the next place they might be working would be a mile from there in another entirely different place."

Iams (record, p. 158) said as to the custom of the Igorots: "As near as I could find out the Igorot miners mine wherever they can find any gold, regardless of any claims; they never claim any mining property. From what I have seen there they hunt for rich stringers; when they find one they follow it and work it out like we call 'gophering' in the United States."

Fred Steuber (record, p. 165) said: "There were some small holes all over the country."

Kelly said (record, pp. 6, 7, and 8), in answer to the question, "What would you say concerning the custom of the Igorots with reference to the assertion of exclusive property rights over mining claims?":

> "Igorots go to mining, as a rule, every year, after the rainy season, and maybe a certain Igorot will mine on one river this year and the next year he will be off on some other stream or on some other quartz lode, just the same; he will find a small little stringer, as we call them, where you can see some free gold. He will work that out until he gets tired of it and then he will go to some other place and find another one; maybe some other Igorot will come along and go into the one that he has left and work that a while in that way and then run over the whole country and work in a little hole here and a little hole there, and they work it until they are tired of it and then go to some place else.

“Q. While an Igorot is working his discovery of a pocket, or stringer as you term it, for how great a distance does he exclude other Igorots from working?

“A. Well, very often he allows several of them to go in with him and he gives them an equal interest in what they recover; he will allow several of his friends to go in and help him to work and give them all equal interest in what they recover.

“Q. In the same pocket?

“A. Yes, sir; he don’t excluded them at all; he just claims the little hole he is in, 2 by 4, just big enough to crawl in.

“Q. And when you speak of admitting other persons on equal shares with him, you mean admit them to the same little hole in which he is working?

“A. Yes, sir; the same place.

“Q. Now, for how long does he claim ownership of that particular hole or pocket?

“A. Well, it depends a good deal on how far this little streak of pay, as they call it, will extend; maybe they will work a month and maybe a week.

“Q. Then I understand you to say he claims it only during such time as he is working it?

“A. Yes, sir.

“Q. He does not exercise any claim of ownership over it after he has ceased work?

“A. No, sir.

“Q. Have you known Jose Fianza to have conducted any mining operations upon these Antamoc mines?

“A. No, sir; I have not any more than the natives who recover gold any place in the district; they are supposed to take it to Fianza.

“Q. Take it to him for what purpose?

> "A. To pay their indebtedness or to sell it to him for whatever he had a mind to pay for it. I have been told by some of the oldest Igorots in that district that Fianza at one time used to pay a medio peso for what was considered an ounce of gold.
>
> "Q. By virtue of what did this arrangement exist?
>
> "A. As near as I can learn he is the high chief of the barrio (or tribe) and they all looked up to him as such.
>
> "Q. Did it exist because of any ownership or claim of ownership on the part of Fianza of these or any particular mines?
>
> "A. Not to my knowledge."

Robiera, a Spaniard who had lived in the Province of Benguet for ten or twelve years, testified as to this custom as follows:

> "Q. Do you know the custom that was in vogue in Spanish times with reference to mining in Antamoc mining district?
>
> "A. The custom that they had for working those mines was that any Igorot who wanted to went there and worked and then sold the gold, but I never heard or knew of anyone claiming to be the owner of the mines.
>
> "Q. State to the court how you learned that custom.
>
> "A. I learned it by going over it selling goods; I saw that all the Igorots sold me gold and that it was the custom of everyone who wanted to to go there and get out gold from those mines."

Francisco Valencio, who had lived in the Province of Benguet for many years and had been an official there under the Spanish Government, testified as to the custom of the Igorots as follows:

> "Q. Who worked in those mines during Spanish times?

> "A. The Igorots who lived there and any other Igorots who wanted to work there.
>
> "Q. Could any Igorot who wanted to work there in those mines, to take out gold for his own use, do so?
>
> "A. Some Igorots from Tublay and Kaybayan also go there to get gold. I think they could because I never heard that anyone prohibited them from so doing.
>
> "Q. During Spanish times did any one person claim to own these mines?
>
> "A. I never observed any one person prohibiting any other person from working there."

The foregoing excerpts from the record from the testimony of men who had been in the district, who had studied the conditions there, and became acquainted with the customs of the Igorots certainly justify the conclusion *that the Igorots never occupied a mine anywhere to the exclusion of all or any other persons*.

The majority opinion (p. 14) attempts to discredit the testimony of these witnesses, particularly the American miners, by the following statement: "All these witnesses had mining claims similar to that of Reavis."

Notwithstanding this attempt to discredit these witnesses, whose testimony was not attacked during the trial of said cause, it will be observed that this custom is corroborated by Fianza himself, by Juan Cariño, Mateo Cariño, Robiera and Francisco Valencio, who were not American miners and who have no reason to misstate the facts by reason of personal interest.

The majority opinion, in an effort evidently to reflect upon the integrity and honest purpose of the defendant, Reavis, in taking up this particular land, refers to the other claim holders in the vicinity as "honest American miners." This imputation as to the honesty of the defendant is not justified by the record. It is confidently believed that one can not read the testimony of the defendant himself without reaching the conclusion that he is stating the truth.

It is admitted (p. 18 of the majority opinion) that the plaintiff never acquired any *title* to the property in question by virtue of the provisions of the Spanish law, and that said property was, at the time the Philippine Islands were ceded to the United States, public property and

that these lands are public lands to which the provisions of the act of Congress of July 1, 1902, are applicable; the right of the plaintiff, therefore, if he has any, is one of prescription only. Section 45 of said act of Congress provides that where such person or association, they and their grantors, have held and worked their claims for a period *equal to the time prescribed by the statute of limitations in the Philippine Islands,* evidence of such possession and working of the claims for such period shall be sufficient to establish the right to a patent thereto under this act, *in the absence of any adverse claim*. This provision of the act of Congress makes applicable to mining claims the statute of prescription in force in the Philippine Islands at that time.

The statute of prescription in force in the Philippine Islands on the 1st of July, 1902, are sections 38, 40, and 41 of the Code of Procedure in Civil Actions, known as Act No. 190 of the Philippine Commission. It is very questionable whether the plaintiff is entitled to the benefit of the period of prescription provided for in these sections. Said section 38 expressly provides that "this chapter shall not apply to *actions already commenced or to cases wherein the right of action has already accrued,* but the statute in force when the action or right of action accrued shall be applicable to such cases."

Section 40 provides that the period of prescription as to real property shall be ten years, or, in other words, that an action for the recovery of title to or possession of real property or a case thereunder can only be brought within ten years after the cause of such action accrues. The plaintiff claims that he and his ancestors have been in possession of such land for fifty or more years. If that be true, had not the cause of action in favor of the plaintiff "already accrued" before the date of the act of Congress or the date when said act of the Philippine Commission went into force? If, then, the cause of action had actually "*already* accrued prior to the date of these respective acts, the question is, Does said provision of the act of the Commission apply to the plaintiff or must he rely upon the prescriptive rights given him, existing in the Philippine Islands prior to that date? We make no finding upon the answer to this question for the reason that we believe that even granting that the provisions of said act of the Philippine Commission are applicable to the claims of the plaintiff here, he has not shown his right to the possession of said land under said act of the Philippine Commission.

Said section 40 provides that "ten years' *actual adverse possession* by any person claiming to be the owner for that time of any land, *uninterruptedly* continued for ten years by occupancy * * * shall vest in that actual occupant or possessor of such land, a full and complete title;" but the same section imposes the further condition that "in order to constitute such title by prescription or adverse possession, the possession by the claimant *

* * must have been *actual, open, public, continuous,* under a claim of title exclusive of any other right and adverse to all other claimants." We contend that the testimony adduced in this case and quoted above clearly demonstrated that the plaintiff had not been in the actual, open, public, continuous possession, under a claim of title adverse to all other claimants not only *not for ten years, but for no period at all*. We call attention to the testimony quoted above relating to the actual possession of said property in support of this statement.

The majority opinion treats the provisions of this prescriptive law as though an actual dispossession of the property was necessary to interrupt the running of the statute in their favor. The provisions of the law provide, however, in addition to the fact that the possession must have been actual, that it shall have been *open* and *public, exclusive of any other right and adverse to all other claimants whatsoever. The actual and continuous possession of the plaintiff was interrupted certainly by Holman* six or eight years before the commencement of the action by the plaintiff; and *by the defendant* more than two years before the commencement of his action; if not also *by Francisco Valencio* ten or twelve years before the beginning of the action by the plaintiff.

One of the conditions of prescriptive title under section 41 is that the claim to title must be public. A large majority of the witnesses both for the plaintiffs and the defendant testified that they understood and believed the mines in question, at the time Reavis took possession of the same, belonged to Holman. *The trial court even found that Reavis located his claims believing the land belonged to Holman*. This belief was so strong in the minds of some of the witnesses who were attempting to locate mines in the Province of Benguet (Knouber, Reavis, and Kelly) that they visited Holman and negotiated with him for the purchase of said mines. Why did they do this? Because it was a matter of public rumor and public knowledge in Antamoc and vicinity that the mines at that time belonged to Holman and not to Fianza. *The record also discloses that Fianza himself told some of the American miners, who went into said province, that said mines belonged to Holman*.

We respectively submit as a proposition of law, even admitting that the plaintiffs had had actual possession of a well-defined, described parcel of land in the mountain of Antamoc, that *such actual possession had been interrupted on at least three different occasions prior to the commencement of their action* and that such interruption of the actual possession, though it was unlawful, had the effect of stopping the running of the statute of prescription in favor of the plaintiffs. *If the possessor of land permits his possession to be interrupted, although unlawfully,* his possession can not be called continuous for the purpose of applying

the provisions of said section 41.

The majority opinion (p. 11) quotes the following from the opinion of the trial court:

> "He (Reavis) went to Antamoc to stake out land for mines that he believed was claimed by another—in the vernacular of the miner, to 'jump Hans Holman's claim.' He was not prospecting for a mine and for hidden minerals; he went to locate a mine already discovered and mineral uncovered and worked for more than half a century. He found honest American prospectors already there with claims staked all about the land that they believed was claimed by another, for the protection of which opened, developed, and worked mine the rumor of an owner was amply sufficient to protect it from invasion and trespass."

This statement has the effect:

(1) To convict Reavis of bad faith and to hold him up to the scorn of honest men by saying that he "jumped" a claim which had theretofore been respected by all honest American miners; and

(2) To show that what he did was to locate an open, developed mine.

The statements in the above quotation are absolutely false and do an injustice to an honest American miner and should be corrected. It appears from the record that Reavis, after being told by the Igorots that this mine belonged to Holman, went to Holman to see him about such claims. This act of the defendant demonstrates that he acted in absolute good faith.

The statement in the majority opinion to the effect that the ownership of these claimants (plaintiffs) to these mines was well known and understood generally among the natives and residents of the Province of Benguet, including the *Spanish officials,* is absolutely unsupported by a scintilla of evidence in the record. There is not a word of evidence in the record that the *Spanish officials* ever recognized or understood that Fianza or his ancestors were the *owners* of any mines whatsoever.

It is alleged that the plaintiff Fianza claimed the possession of the particular parcel of land in question by a statement made on the 31st of January, 1901, for the purposes of taxation before the secretary of the pueblo, which shows that he was then in possession of said land. This statement is found in Exhibit A of the plaintiffs. An examination of this statement of the

plaintiffs neither *shows* that he was in possession of said land nor the location of the same. His statement there is just as indefinite and uncertain, relating to the specific tract of land, as his statement made before the court during the trial of said cause.

The record fully shows that the defendant, Reavis, early in the year 1901, took possession without protest of the land which he claims and which is definitely described in the record, under the custom and in conformity with the laws of the United States relating to mines, recorded his claims, performed work upon said mines, and continued in possession of the same up to and including the time when he received notice of the provisions of the act of Congress of July 1, 1902; that immediately upon receiving notice of the provisions of said act he complied with the conditions thereof with reference to making affidavits and filing a record of his claims and staking the same out—marking them out—so that any person traveling in that part of the mountain might become aware of the exact location of his claims. The plaintiffs, even at the time of the commencement of their action (1904), had taken no steps to comply with the said act of Congress. The record shows that until the time the injunction was granted in this case by the lower court the defendant had performed work upon his respective claims in conformity with the provisions of said act of Congress; that he had done everything required of him by the law; that the plaintiffs had done nothing to comply with the provisions of the said act of Congress. It is not denied that the defendant had complied with the provisions of the said act of Congress.

We agree with the majority opinion that this court can not reverse the decision of the lower court until it appears that the finding made by the trial court is *"plainly and manifestly against the weight of evidence."* We agree with this doctrine, but firmly submit that there is nothing in the record, beyond the declaration of Fianza himself, which shows that the plaintiffs ever occupied the particular tract of ground now claimed, *while there is absolutely no evidence of any character* to show that they occupied *any land to the exclusion of all other persons. The evidence is all to the contrary.*

The court finds that the plaintiffs and their ancestors have been working these mines for generations. Fianza, himself, testified that if they did not find gold in 1 or 2 fathoms they made another place until they did find something.

The lower court attempted to defeat the claim of the defendant by the statement that the defendant had not complied with the act of Congress providing for the location and operation of mineral claims within the Philippine Islands. It is asserted that the evidence adduced during the trial of the cause does not support this finding of fact, but, even

granting that the defendant did not comply with every detail of the act of Congress with exactness, it was not in the mouth of the plaintiff to raise this objection, for the reason that he had made no attempt to comply with the law himself. Furthermore, section 29 of the said act provides that "failure on the part of a locater of mineral claims to comply with any of the foregoing provisions of said section shall not be deemed to invalidate such location if upon the facts it shall appear that such locater has actually discovered mineral in place upon such location, and that there has been, upon his part, a *bona fide* attempt to comply with the provisions of this act, and if the non-observance of the formalities hereinbefore referred to is not of a character calculated to mislead other persons desiring to locate claims in the vicinity."

One can not read the record of what the defendant did in his attempt to locate and record his claim without reaching the conclusion that there has been, upon his part, a *bona fide* attempt to comply with the provisions of this act, and that, if there was a failure, which is not admitted, such failure is not "of a character calculated to mislead other persons desiring to locate claims in the vicinity."

From all the foregoing statement of facts, and from a thorough examination of the evidence adduced at the trial of said cause, we reach the following conclusions:

First. That the lands claimed by the plaintiffs are not described in their complaint with sufficient certainty or definiteness to support a judgment in their favor, nor to justify the court in granting an injunction to prevent the defendant from entering upon the lands which they claim.

Second. That the evidence adduced at the trial of the cause does not disclose how or in what manner the lands claimed by the plaintiffs conflict with the lands occupied by the defendant.

Third. That the evidence adduced does not show that the plaintiffs or any one of them have ever possessed or mined any particular tract of land under claim of ownership *to the exclusion of all others.*

Fourth. That the possession of the plaintiffs has not been actual, open, public, continuous, uninterrupted, under claim of title exclusive of any other right, and adverse to all other claims.

Fifth. That the evidence does not disclose that the possession of the plaintiffs, if any exclusive possession at all is proved, is that possession, nor does it constitute that exclusive

holding and working contemplated by section 45 of the Philippine Bill or by the statutes of prescription in force in the Philippine Islands.

Sixth. That the evidence does not disclose that possession of the mines claimed by the plaintiffs was continuous and exclusive of all other persons, and that such possession had been uninterrupted, without interference or adverse claim of any kind.

Seventh. That the evidence does not disclose that the plaintiffs made any protest against the occupation of said land to the defendant, to Holman, or to Valencio.

Eighth. That the evidence does not disclose that the plaintiffs ever made any attempt, prior to the commencement of this action in the court below, to definitely mark the boundaries of the land included in Exhibit C.

Ninth. That there is not a scintilla of evidence in the record which shows that the said lands are held in trust by the Government of the Philippine Islands for the plaintiffs.

The judgment of the lower court should be reversed.

DISSENTING

TRACEY, J.:

Since the writing of the two principal opinions in this case, and since the signing of the prevailing opinion by a majority of the court, but before it was filed or the decision was entered thereon, the Philippine Commission in Act No. 1596 apparently did away with the rule in the De la Rama case and made it our duty to review the evidence and retry the questions of fact, even where the judgment of the Court of First Instance is not plainly and manifestly against the weight of the evidence.

Read anew, without regard to the findings of the trial judge, except in so far as they are founded upon his view of the witnesses, I do not think that all the testimony before us establishes such a holding and working of any property identified with that described in the complaint, as constitutes a possession thereof under section 45 of the act of Congress of July 1, 1902, entitling the plaintiff to a patent thereon. The plaintiff occupying the property claimed by him, immediately prior to the commencement of the action, had in his power to

describe in detail the condition of the workings on the land and narrate his own acts in relation thereto. Upon him rested the burden of proof on this important point, so hotly contested at the trial, and on him, rather than on his adversary, should fall the consequences of the lack of decisive and satisfactory evidence in relation to it.

For this reason only I feel constrained to dissent from the opinion of the majority.

Date created: September 11, 2014