

ANICETO G. MEDEL, PLAINTIFF AND APPELLANT, VS. TIBURCIO MILITANTE, DEFENDANT AND APPELLEE.*G. R. No. L-16096. March 30, 1921*

Ponente: STREET, J.

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This action of unlawful detainer was originally instituted by Aniceto G. Medel in the court of the justice of the peace of the municipality of Libon, Albay, to recover the possession of a parcel of property located in said municipality. Judgment having been entered in favor of the plaintiff in the court of the justice of the peace, the cause was taken by appeal to the Court of First Instance. In the original complaint two persons were named as defendants, to wit, Tiburcio Militante and Bernardo Cortes, but the latter died while the cause was pending in the Court of First Instance; and as his representatives, upon being cited, did not see fit to put in an appearance, the cause proceeded to its conclusion in the Court of First Instance upon the defense made by Tiburcio Militante alone; and the judge having dismissed the action, the plaintiff appealed.

At the hearing evidence was submitted in behalf of the plaintiff which establishes clearly enough that the plaintiff is the owner of the parcel in question and that for several years prior to June, 1915, Tiburcio Militante and Bernardo Cortes had enjoyed the peaceful occupation of the same as croppers on the shares under the plaintiff. In addition to being croppers on the shares, they were also charged with the care of certain carabaos which had been committed to their keeping by the plaintiff.

In the month of June aforesaid, the plaintiff appointed another person, named Lorenzo Resera, as his agent with respect to the parcel of land in question and directed him to procure materials and cause a granary to be erected thereon. To this end Resera purchased a house in the vicinity for the sum of P50, intending to have the granary constructed from the materials thus obtained. However, upon attempting to occupy the parcel of ground where the granary was to be erected Resera encountered obstruction from the defendants, and was given to understand that the granary could not be put there. As a result materials, to the value of about P60, which had been brought to the spot for building purposes were left on the ground, and no further attempt was made to proceed with the construction.

In their answer the defendants alleged that they are the owners of the property, and this pretense was apparently at the bottom of the refusal to surrender possession and permit the granary to be built. Needless to say no proof was submitted by Tiburcio Militante in support of his pretense of ownership, and the claim is admittedly false.

Upon the facts stated, the right of the plaintiff to recover possession of the property in question in this action of unlawful detainer is entirely clear. Says section 80 of the Code of Civil Procedure: "Any * * * person against whom the possession of any land, or building, is unlawfully withheld after the determination of the right to hold possession * * * shall, at any time within one year after such unlawful deprivation or withholding of possession, be entitled * * * to restitution of the land," etc. In the case before us the right of possession which had been exercised by the defendant in the character of tenant and agent of the plaintiff was determined the instant he

denied the plaintiff's title and began to exercise dominion over the land upon the false pretext that he himself was the owner. It is not permissible to anyone to occupy inconsistent positions; and when the defendant began to assert ownership in himself, this necessarily operated as a renunciation of his right to possession as tenant (*Tobin vs. Young*, 124 Ind., 507). From that moment the character of his occupation was changed, and his possession became illegal. It would make no difference in this connection whether the defendant's occupation was merely permissive on the part of the owner, and terminable at his option—as we may assume to have been the case—or was fixed by contract for a definite term. The denial of the landlord's title and the assertion of an adverse interest precludes the defense that the lease had not terminated.

Speaking to this point in *Willison vs. Watkins* (3 Pet. [U. S.], 43, 48), the Supreme Court of the United States said: "Had there been a formal lease for a term not then expired, the lessee forfeited it by this act of hostility; had it been a lease at will from year to year, he was entitled to no notice to quit before an ejectment. The landlord's action would be as against a trespasser as much so as if no relation had ever existed between them."

In regard to the remedy adapted to the case, there can be no doubt that the action of unlawful detainer, under section 80 of the Code of Civil Procedure, is appropriate; and it is not necessary that the plaintiff should resort primarily to ejectment in the Court of First Instance. By the very language of section 80, the possessory remedy is given to the landlord whenever the right of the tenant to retain possession is ended, and no good reason occurs to us why the plain intent of the statute should not be given effect in a case like that now before us. As will be seen from the language of the complaint, the plaintiff seeks to recover possession only, without raising the question of title; the right to have possession is proved; and it cannot be permitted that the defendant should defeat this action merely by inserting in his answer a claim of ownership in himself. Whether the court of a justice of the peace has jurisdiction to entertain an action of this character must be determined from the form in which the complaint is drawn—not from the allegations of the answer.

Of course if the situation were such that the court would have to adjudicate the ownership to the plaintiff as preliminary to the awarding of possession to him, the action of unlawful detainer could not be maintained; but here the defendant acquired possession as tenant and he is estopped, in an action concerned exclusively with possession, from denying the right of his landlord. It may be admitted that if a tenant, enjoying possession under a contract of lease, should acquire the true title from his landlord or some external source, he could himself maintain an action against his landlord to quiet title and obtain a declaration of ownership in himself, but he can not maintain possession in an action of unlawful detainer.

We note that in drafting the complaint in this action the attorney for the plaintiff stated the facts in two different ways. In the statement of the first cause of action, it is alleged that, while the plaintiff was in peaceful possession of the parcel of land in question, the defendants entered with force and violence and expelled the plaintiff therefrom. In the statement of the second cause of action it is merely alleged that the defendants had illegally detained possession. In this count it does not appear that possession had been wrongfully acquired. The facts proved clearly make out a case in conformity with the second count.

His Honor, the trial judge, was apparently of the Opinion that the action could not be maintained except upon proof showing that the defendants had originally acquired possession by force. In this he was, as we have already shown, manifestly in error; and in this connection it may not be amiss to call attention to the circumstance that two entirely distinct causes of action are coupled together in section 80 of the Code of Civil Procedure. The first is based on entry effected by force, intimidation, threat, strategy, or stealth. The second is based on unlawful detention by a person who has acquired possession rightfully, but who detains the property after the right to keep possession is ended. The action can be maintained if a case is made out to conform with either of these distinct causes of action; and where the real cause of action is unlawful detention by a person who originally acquired

lawful possession, the allegations of seizure by force may be ignored.

The plaintiff claims damages in the complaint to the extent of P100; and in this connection it has been proved that he lost materials to the value of P60, by reason of the wrongful refusal of the defendants to permit the granary to be erected on the land, and that he also paid out to a carpenter the further sum of P50 for work to be done on the granary which was not built. The damages claimed are covered by these two items, to say nothing of the loss occasioned by the detention of the property during the long period of time since this action was instituted.

We note that the judgment rendered in the lower court was a mere dismissal of the action; but the cause was really heard on the merits, and there is no reason why we should not, upon reversal of the case in this court, render judgment absolute, as will accordingly be done.

The judgment appealed from is reversed, and it is ordered that the plaintiff recover of the defendant the possession of the land described in the complaint, together with the sum of P100, as damages, with interest at 6 per cent per annum from November 21, 1918, in accordance with section 510 of the Code of Civil Procedure, together with the costs of both instances. So ordered.

Mapa, C. J., Araullo, Malcolm, and Villamor, JJ., concur.

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