

GREGORIO PEÑALOSA, PLAINTIFF AND APPELLEE, VS. DEMETRIO TUASON ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 6809. March 22, 1912*

Ponente: CARSON, J.

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Plaintiff in this action alleges, substantially, that on October 1, 1907, he took possession of a valuable tract of land in the city of Manila under a rental contract with the defendant Mariano Tuason, which was subsequently ratified by the defendant Demetrio Tuason acting for himself and the other defendants, the joint owners of the land thus rented; that under the terms of this contract, which was not in writing, defendants obligated themselves to reduce the agreement to writing at or before the time when plaintiff was to take possession; that after he had taken possession on or about the 1st day of October, 1907, he made valuable improvements on the land with the knowledge and approval of the defendants; that relying on his rental contract he entered into various contracts for the sale of zacate growing and to be grown on the rented land, which secured to him a substantial income therefrom during the period of his occupation; that he has already paid a considerable sum on account of the stipulated rent, and that he stands ready and has always stood ready to pay any rent which may be due by him under the contract; that notwithstanding their express agreement so to do, the defendants failed and refused, and continue to fail and refuse to execute the written contract of rental; that the defendant Demetrio Tuason, acting for himself and his codefendants, procured plaintiff's ejectment from the land in question under a writ of execution based on a judgment against him entered in a summary action in the court of the justice of the peace of the city of Manila, this action having been instituted under the provisions of section 80 of the Code of Civil Procedure, for the recovery of the land in question because of failure to pay the rent as stipulated in the rental contract; that not only was judgment for possession rendered against him in that action, but also a money judgment for rent which the justice of the peace held to be due and unpaid under the rental contract, and that valuable personal property had been levied upon and sold to satisfy this money judgment; that as a result of his ejectment from the possession of the land in question he had already suffered heavy loss upon his contracts for the delivery of zacate, and would continue to lose heavily so long as he continued to be deprived of the possession of the land.

The prayer of the complaint, as finally amended, is for specific performance of the rental contract, for damages on account of his ejectment by virtue of the judgment in the summary action in the court of the justice of the peace, for damages arising from the levy and sale of certain personal property to satisfy the money portion of that judgment, and for damages by way of compensation for the improvements which he alleges he made on the land while in possession under the contract.

The trial court found the facts substantially as alleged by the plaintiff, and judgment was entered in his favor: (1) Requiring the defendants to execute a written contract of lease of the land described in the complaint for a period of ten years from the first day of October, 1907. (2) "In favor of the plaintiff and against the defendants, for the sum of P7,650, with interest thereon at the rate of 6 per cent per annum since the 16th day of September, 1908." (This being the amount of two items of the damages as estimated by the trial court which were "suffered by the

plaintiff" and "caused by his ejectment from the land in controversy" and the execution of the judgment of the justice of the peace, less the sum of P540 which the court allowed to the defendants on a counterclaim based upon certain advances made to the plaintiff. As shown by the findings of fact by the trial judge, these items of damage amounted to P7,200 on account of improvements made upon the land by the plaintiff while in possession, and P990 on account of certain personal property of the plaintiff which was sold at sheriff's sale in execution of the money part of the judgment of the justice of the peace.) (3) In favor of the plaintiff and against the defendants for the further sum of P800 for each and every month, beginning with the 5th day of October, 1908, the date of the ejectment of the plaintiff under the judgment against him in the court of the justice of the peace; until the land is restored to the plaintiff, "on account of damages arising from the plaintiff's loss in being deprived of the proceeds of said land," against which the defendants are entitled to set off the rent due from the plaintiff since the month of October, 1907 (the time when he entered into possession), at the rate of P360 per month, less P2,625.25, the amount of rent which the trial court found had already been paid at the date of the institution of this action.

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The judgment of the Court of First Instance in this action rests upon its finding as to the existence of the relation of landlord and tenant between the parties, arising from the partial performance of the verbal rental contract; the trial judge being of opinion that plaintiff is entitled to specific performance of this rental contract, and damages resulting from the execution of the judgment against him in the summary action in the court of the justice of the peace of the city of Manila, by virtue of which he was ejected from possession of the land in question.

But as appears from the complaint, as well as from the evidence and the findings of the trial judge, this question as to the existence of the relation of landlord and tenant between the parties to this action had already been adjudicated in the summary action in the court of the justice of the peace of the city of Manila. In that action, the justice of the peace found that while this relation did at one time exist, the defendant in that action, who is the plaintiff in this action, had violated the terms of his rental contract, by his failure to pay the stipulated rent; and judgment was entered in the former action against the plaintiff in this action, for the recovery of possession of the land in question and for the rent which was found to be due and unpaid.

There can be no doubt that if the judgment of the justice of the peace and the facts as found by him be deemed conclusive in this action, plaintiff's prayer for specific performance of the rental contract and for damages for the breach of this contract by the defendants must be dismissed, since the justice of the peace found that the plaintiff in this action had neglected and failed to comply with the terms of his rental contract in that he did not pay the rent as stipulated; that as a consequence the rental contract had been rescinded; that the tenant had lost his right to possession under the contract; and that as a result of his breach of the contract judgment should be rendered against him for possession and for the amount of the unpaid rents and damages which were shown to have arisen under the contract and as a result of its breach by the plaintiff.

But the trial judge was of opinion and counsel for plaintiff contend that under the express terms of section 87 of the Code of Civil Procedure the judgment in the summary action in the court of the justice of the peace is not a bar to this action in the Court of First Instance; and counsel insist that the trial judge properly disregarded the findings of fact by the justice of the peace and rendered judgment correctly upon the facts as developed by the evidence submitted to him.

We do not think that such an application of the provisions of that section can be maintained, and as our holding on this point necessitates the reversal of the judgment of the court below, it becomes important to ascertain the precise meaning and scope of the provisions of section 87 of the Code of Civil Procedure upon which appellee relies.

Section 87 of the Code of Civil Procedure is as follows:

"Such judgment not conclusive in another action.—A judgment rendered in a suit of unlawful entry and detainer, either for the plaintiff or defendant, shall not bar an action in the Court of First Instance between the same parties respecting title to the land or building; nor shall any judgment given therein be held conclusive of the facts found in another action between the same parties."

Counsel for appellee relies on the express provisions of the last clause of this section.

The important question to be determined, then, is the meaning of the phrase "another action between the same parties" as used in the last clause of this section. Does it mean every other action of every kind between the same parties, or is it limited to a certain class of actions, and if so to what actions? It must be admitted that read by itself, without regard to the context it would seem to include every other action of every kind between the same parties. But such a construction would lead to the monstrous conclusion that the legislator intended that the summary proceedings authorized and provided under section 80 of the Code of Civil Procedure and its amendments should be mere expensive and vexatious farces, determining nothing, and binding no one by the adjudication. It would permit either of the parties to one of these actions, when judgment is rendered against him by the justice of the peace or by the judge of the Court of First Instance on appeal, to institute forthwith a new action, based upon precisely the same cause of action, relating to the identical subject matter, and supported by the same evidence; and to have a second adjudication in the same or in another court, of the identical issues solemnly adjudicated in the former action.

We do not believe that it could have been the intention of the Code of Civil Procedure thus to set at naught those basic principles of the doctrines of *res judicata* which are recognized elsewhere in that code; for it is a general rule common to all civilized systems of jurisprudence that "the solemn and deliberate sentence of the law, pronounced by its appointed organs, upon a disputed fact or state of facts, should be regarded as" a final and conclusive determination of the question litigated, and should forever set the controversy at rest." Indeed it has been well said that this maxim is more than a mere rule of law; more even than an important principle of public policy; and that it is not too much to say that it is a fundamental concept in the organization of every jural society.

"For unless any judgment should at some point become final, and have the quality of establishing its contents as irrefragable truth, litigation would become interminable, the rights of parties would be involved in endless confusion, the courts, stripped of their most efficient powers, would become little more than advisory bodies, and thus the most important function of government—that of ascertaining and enforcing rights—would go unfulfilled." (Black on Judgments, par. 500.)

That it was the intention of the legislator to modify, limit, and restrict the general rules based on the doctrine of *res judicata* in their application to summary actions of this nature must be admitted; and, indeed, in a former decision (*Ty Laco Cioco vs. Muro*, 9 Phil. Rep., 100) we pointed out the reasons which forbid the application of the general rules based on the doctrine of *res judicata* in reliance upon a judgment in one of these actions in another action "respecting title to real estate." But no sound reason has been suggested or can be suggested for setting aside the doctrine in its entirety in relation to these actions. On the contrary, broad principles of sound public policy, the maintenance of public order, and the rights of society, all demand that the general rules governing the subject of estoppel by judgment should be applied with reference to judgments in these actions as well as to all other judgments, save only in so far as their peculiar nature as special statutory proceedings necessitates modifications or restrictions in the application of these rules.

We think that the true meaning and effect of the last clause of the section in question will become apparent if it be examined in connection with the context, and with the general principles governing the subject of *res judicata* as recognized and applied in Anglo-American jurisprudence, keeping in mind the fact that the code of which it

constitutes a part was enacted by a commission a majority of whose members were American lawyers, and that its provisions were borrowed with but slight modifications from similar provisions to be found in the codes of one or other of the States of the Union.

The subject of *res judicata* or estoppel by judgment as known to Anglo-American jurisprudence is governed by two main rules uniformly recognized by the authorities, which are very distinctly laid down and defined by Mr. Justice Field in the following citation from his opinion in the case of *Cromwell vs. Sac County* (94 U. S., 351):

"In considering the operation of this judgment, it should be borne in mind, as stated by counsel, that there is a difference between the effect of a judgment as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Thus for example; a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that perfect defenses actually existed, of which no proof was offered, such as forgery, want of consideration, or payment. If such defenses were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed. The language, therefore, which is so often used, that a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented, is strictly accurate, when applied to the demand or claim in controversy. Such demand or claim, having passed into judgment, cannot again be brought into litigation between the parties in proceedings at law upon any ground whatever.

"But where the second action between the same parties is upon a different claim or demand, the judgment in the prior action operates as an estoppel only as to those matters in issue or points controverted upon the determination of which the finding or verdict was rendered. In all cases, therefore, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action; not what might have been thus litigated and determined. Only upon such matters is the judgment conclusive in another action."

The rules thus referred to in the opinion of Mr. Justice Field may be summarily stated as follows :

- A judgment rendered by a court of competent jurisdiction on the merits is a bar to any future suit between the same parties or their privies upon the same cause of action so long as it remains unreversed.
- A point which was actually and directly in issue in a former suit and was there judicially passed upon and determined by a domestic court of competent jurisdiction cannot be again drawn in question in any future action between the same parties or their privies, even when the causes of action in the two suits are wholly different.

These two main rules mark a sharp distinction between the principles governing the two typical cases in which a judgment may operate as evidence. No intelligent discussion of the subject of *res judicata* or of the multitude of authorities and varying statutes touching that subject can be maintained without keeping clearly in mind the distinction between the principles governing these two typical cases. Indeed, in speaking of these cases the term "bar by former judgment" is uniformly employed to indicate the case governed by the first general rule above laid down; and the phrase "conclusiveness of the judgment" in referring to the second.

"The differences between the two cases are found chiefly in two regards, viz: as respects the identity of the subject matter in the successive suits, and as respects the scope of the estoppel, as to the matters determined by

it." (Black on Judgments, par. 506.)

With these two rules in mind a critical examination of the provisions of the section under consideration (87 of the Code of Civil Procedure) will leave but little room for doubt as to their true meaning and effect. Manifestly, the first provision of the section treats of cases falling under the first rule, and the second treats of cases falling under the second rule. The first provision sets out the case where the first of the above mentioned rules, that is, the rule as to a "bar by former judgment," shall not be applicable in relation to these summary actions. In the language of the section itself, "a judgment rendered in a suit of unlawful entry and detainer—shall not bar an action—between the same parties respecting title to the land in question." While the second provision which is contained in the last clause of the section, quite as clearly has for its object the forbidding in toto of the application with reference to these actions of the second of the above-mentioned rules, that is to say, the rule touching the "collusiveness of the judgment." To quote the provision itself: "Nor shall any judgment given therein be held conclusive of the facts found in another action between the same parties."

The two provisions refer to wholly separate and distinct cases, and are to be construed by reference to the two main rules of the doctrine of res judicata or estoppel by judgment to which they refer. We conclude, therefore, that the prohibition of the application of the rule touching a "bar by judgment" in an action respecting the title to the land or buildings which is contained in the first provision of the section, leaves this rule intact in all other cases; so that as to the actions of unlawful entry and detainer it may be said that, except as to actions respecting title to the land or buildings in question, the first general rule remains in full force and effect, and "a judgment rendered (in an action of unlawful entry and detainer) by a court of competent jurisdiction on the merits, is, a bar to any future suit between the same parties or their privies upon the same cause of action so long as it remains unreversed;" or in the language of Mr. Justice Field in the opinion just cited:

"It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain[^]. or defeat the claim or demand, but as to any other admissible" matter which might have been offered for that purpose."

And we conclude that the language of the last clause of the section has for its object the prohibition of the application, with reference to judgments in these summary actions, of the rule touching "collusiveness of judgments," which prescribes that points at issue in a former suit, once judicially passed upon and determined, may not again be drawn in question in a future action between the same parties, even when the cause of action is different. So that the clause used therein "another action between the same parties" must be understood to refer to other actions based upon another claim or demand, that is to say, upon a different cause of action.

That this is the correct construction of the section under consideration will also be made apparent if we consider the scope and object of these statutory actions of unlawful entry and detainer, and the reasons which require certain limitations and restrictions, in the application to them of the general rules based upon the doctrine of res judicata.

In this connection a recurrence to the history and nature of these actions as known to Anglo-American jurisprudence will be of some service. In the earliest days of the English common law any person disseized of his lands who had not lost his right of entry thereto was authorized with force and arms to enter upon such lands and by force and arms to retain its possession. Possibly, however, this rule, even at that early time, was subject to some qualification such as that the entry must not be by a breach of the public peace. In any event this, licentious course of procedure by giving an opportunity to powerful men under the pretense of feigned title to eject their weaker neighbors, or by force to retain a wrongful possession, made it necessary to restrain such men from the use of all violent methods of doing themselves justice.. As far back as 2 Edward III, the statute of Northampton, and again in the 5 and 10 Richard II, additional statutes were enacted, controlling the subject. And a general

revision of the law on this subject was made in 8 Henry VI, which is substantially the origin of existing law and of the prohibitory statutes in England and the United States upon the subject of forcible entry and detainer as known to Anglo-American jurisprudence. (2 Edw. III, c. 3; 5 Ric. II, c. 8; 15 Ric. II, c. 2; 8 Hen. VI, c. 9. See remarks of Chief Justice Bigelow in *Presbrey vs. Presbrey*, 13 Alien, 281, 284.)

The proceedings under this statute were originally by indictment and purely criminal in nature, though at the complaint of the injured party; but by the statute of Henry VI, the court before whom the cause was tried, although by indictment, had authority to order the restitution of the detained estate to the party entitled to it; and it is said that perhaps generally, now, in those States in which the statute of Henry VI has been followed, the prosecution under the statute is ordinarily a public prosecution by indictment. Indeed it will be found that forcible entry and detainer is perhaps more commonly treated by textbook writers as a crime to be punished by indictment, than as a mere civil wrong to be redressed in civil action.

The statutes of the several States of the United States are substantially based on these prohibitory English statutes, and, speaking generally, they declare that no entry shall be made into land or other possessions but in cases where an entry is given by law; and in such cases only in a peaceable manner, and not with a strong hand, nor with multitude of people. Many of these statutes then proceed to punish any violation of the law by imprisonment as a public offense; and at the same time restore to the aggrieved person the possession of the premises from which he had been forcibly ejected or detained. Although the proceedings were originally in the form of a criminal prosecution, by gradual addition to the early prohibitory statutes or provisions looking to the restitution of the property to the party dispossessed, the remedy has, in general, become a private rather than a public one, although the form of the proceeding, the rules of law which govern it, and the jurisdiction of the court wherein it may be maintained remain to a great degree unchanged.

This course of legislation, however, can be explained only upon the theory that these statutory summary actions of unlawful entry and detainer are not processes to determine the actual title to an estate, nor to determine the right of entry to an estate, but simply quieting processes by virtue of which a party in possession of an estate may not be dispossessed of that estate by force; the law preserving his possession to him in a summary manner until the right of ownership or of possession can be tried in due course of law and by due process of law rather than left to be determined by the relative strength of the parties.

In the course of time it was seen that public policy and the convenience of land owners would be subserved by extending the scope of the original action of unlawful entry and detainer (which, formerly, was only allowed to one who had been deprived of possession of land or buildings by force and violence) to landlords against whom tenants unlawfully held property rented by them, and in general, to persons detaining lands or buildings despite the existence of contract obligations to surrender possession thereof. Thus the right to a summary action of this nature, which had long been extended generally in the United States to persons deprived of the physical possession of real estate by force and arms, has been further extended by statute in many jurisdictions so as to include all cases wherein a person "against whom the possession of land or a building is unlawfully withheld by his tenant, vendee, vendor, or other person after the expiration of his right by contract, express or implied, to hold possession" is deprived of, possession. This is substantially the form of the statute as adopted in the Code of Civil Procedure for the Philippine Islands, These actions, even as modified by statute, being in their essence mere quieting processes, original jurisdiction therein was and is continued in the courts of the justices of the peace, wherein criminal prosecutions were had in the early history of proceedings of this nature; and this notwithstanding the fact that the right to the immediate possession of real estate is summarily adjudicated therein, and notwithstanding the further fact that the value of the property in question and the amount of damages which may be allowed far, exceed the limit of the jurisdiction of these courts in ordinary actions.

Manifestly, then, the peculiar nature of these actions, as mere quieting processes, and not processes to determine the actual title to an estate; and as summary actions in a court not of record wherein questions affecting real estate are often incidentally adjudicated, without regard to the value of the real estate or the amount of damages involved; necessitates and necessitates the modification of the general rules based on the doctrine of *res judicata* when applied with reference to them; or more correctly stated, the principles on which the doctrine of *res judicata* is based, when applied with relation to these actions, results in various modifications of the general rules derived from these principles as applied to ordinary actions.

We have already shown in the case of *Ty Laco Cioco vs. Muro* (9 Phil. Rep., 100) that the issue in an action of this nature being in general the mere naked possession in fact, a judgment in such an action should not, on principle, be deemed a bar to another action between the same parties "respecting title to real estate;" and having in mind the summary nature of these actions, the fact that they are tried originally in a court not of record, and the further fact that although tried in the courts of the justices of the peace, no limitation is set upon the value of the property affected thereby, it will readily be understood that the legislator might well deem it unwise and unsafe to permit the facts found in such actions to be held conclusive in other actions between the same parties "upon a different claim or cause of action."

Section 87 of the Code of Civil Procedure, as we hold, expressly provides for these two cases wherein as we have seen, the history and nature of these actions seem to render it necessary or expedient that the general rules derived from the doctrine of *res judicata* should be modified. But no sufficient reason has been or can be advanced (either on principle or adduced from an examination of the language of this section itself) for holding that a judgment rendered in an action of this nature should not constitute an absolute bar to a subsequent action (not an action respecting title to real estate) between the same parties upon the same claim or demand: and a finality as to the claim or demand in controversy, "concluding the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose." (Quotation from decision *Cromwell vs. Sac County*, supra; *Hurley vs. Lamoreaux*, 29 Minn., 138; *Cobb vs. Arnold*, 12 Met., 39; *Jones vs. Reynolds*, 7 Car. & P. 335; *Riverside Co. vs. Townsend*, 120 Ill., 9; *Fish vs. Benson*, 71 Cal., 428; *Mattox vs. Helm*, 15 Am. Dec, 64; *Mitchell vs. Davis*, 23 Cal, 381; *Norwood vs. Kirfcy*, 70 Ala., 397; *Black on Judgments*, par. 506, also par. 663.)

What has been said heretofore in this opinion has had reference more especially to ordinary actions, anciently and technically known as actions of "Forcible Entry and Detainer;" but a little reflection will show that with some slight modifications, our conclusions are equally applicable to that special class of statutory actions, which are called by this name, and whereby "a landlord, vendor, vendee, or other person against whom the possession of land or a building is unlawfully withheld by his tenant, vendee, vendor, or other person, after the expiration of his right by contract, express or implied, to hold possession" may recover possession. It may be admitted, perhaps, that there is some anomaly in treating these actions as on precisely the same footing as the ancient action of forcible entry and detainer, but the legislator has not seen fit to make any practical distinction. Our statute, in express terms, places them in the same category and, in experience, no great inconvenience has been found to result therefrom.

It necessarily results, therefore, that a judgment in an action instituted under section 80 of the Code of Civil Procedure and its amendments, wherein recovery is sought of the possession of leased premises from an alleged tenant by one claiming to be his landlord, is a bar to a subsequent action between the same parties upon the same claim or demand, and a finality as to the claim or demand in controversy, concluding parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose—that is to say, it is

conclusive in such cases as to the facts upon which the justice of the peace must have rested or might have rested his decision. It is conclusive therefore of the fact of the existence of the relation, of landlord and tenant between the parties, of the execution of a rental contract, of the right of possession thereunder, and that the contract as executed had or had not expired or had or had not been violated; and it is conclusive further as to the terms of the contract, where a judgment for rent or damages is based on the construction placed on those terms by the justice of the peace.

Before closing the general discussion it may be well to direct attention to the reasoning of our decision in the case of *Tanguinlay vs. Quiros* (10 Phil. Rep., 360) wherein we held that sections 306 and 307 of the Code of Civil Procedure are not to be construed as changing¹ the "general American rule" based on the doctrine of *res judicata* therein laid down. Similar reasoning, reenforced by the fact that as to actions of unlawful entry and detainer the subject is largely controlled by the special provisions of the code relating thereto, justify us in holding, without further argument, that the rules hereinbefore laid down are not in conflict with the provisions of sections 306 and 307 of the Code of Civil Procedure.

Having arrived at our conclusion that the provisions of section 87 of the Code of Civil Procedure do not limit or restrict the application of the general rules based on the doctrine of *res judicata* as developed in Anglo-American jurisprudence in reliance on judgments in forcible entry and detainer actions, save only so far as that section expressly provides that such actions shall not be a bar to another action respecting title to real estate, and so far as it provides further that the facts found in a judgment in such an action shall not be conclusive in another action between the parties upon a different claim or cause of action; it only remains to apply these rules in the case at bar.

It is contended that, even under these rules, the judgment in the action of unlawful detainer cannot be held as a bar to the present action, because this is an action for specific performance and for damages for nonfulfillment of a contract, and therefore wholly different in form and not within the jurisdiction of the justice of the peace who tried the former action; and further because *Demetrio Tuason* appears to have been the sole plaintiff in the former action, while in the present action he is joined as defendant with the coowners of the land in question.

The first contention is in direct conflict with the doctrine laid down in our decision in the case of *Tanguinlay vs. Quiros* (10 Phil. Rep., 360), wherein we pointed out that "courts of the present day are not concerned so much with the form of actions as with their substance" and held that despite a difference in the form of the action, nevertheless the doctrine of *res judicata* would be applied where it appeared that the parties in the two suits were in truth "litigating for the same thing."

"It is a well-settled rule, and one that is supported by a multitude of authorities, that a party cannot, by varying the form of action, or adopting a different method of presenting his case, escape the operation of the principle that one and the same cause of action shall not be twice litigated between the same parties or their privies." (Black on Judgments, par. 729, and many cases cited.)

As stated in *Hardin vs. Palmerlee* (28 Minn., 450), the rule is—

"That the remedy sought, or the mere form of action, may be different, does not prevent the estoppel of the former adjudication. If, upon the facts in issue in the former action, the plaintiff was entitled in that action to a remedy such as the law awards as compensation or redress for the alleged wrong, or if, upon those facts, he was entitled to no remedy, adjudication of his right to recover in that action bars his right to afterwards seek a different remedy upon the same facts or cause of action."

In the case at bar, the claim of the plaintiff that he is entitled to possession of the land in question, by virtue of his oral contract and the due performance by him of the conditions of that contract, would have been a complete

defense in the action for unlawful detainer if it had been duly alleged and established by competent evidence; hence the adverse adjudication of plaintiff's claim of a right to possession in the former action is a complete bar to his right now to seek to enforce this claim in an action different in form, but based on the same facts. For the purpose of ascertaining the identity of the causes of action the authorities generally agree in accepting the following test as sufficient:

"Would the same evidence support and establish both the present and the former cause of action ? If so, the former recovery is a bar; if otherwise, it does not stand in the way of the former action." (See many cases cited in note 262, Black on Judgments, par. 726.)

It is very clear, that the facts on which the cause of action in the case at bar is predicated, had they been pleaded and proven in the former action in the court of the justice of the peace, would have been a complete defense to that action. It follows, that under the rule just laid down, the cause of action in the present case must be held to be identical with the cause of action in the former case.

The contention that the former action is not a bar to the present action because the parties to the two actions are not absolutely identical, is not supported either by reason or authority. While it is true that in general, upon the principle that estoppels must be mutual, no person is entitled to take advantage of a former judgment or decree, as decisive in his favor of a matter in controversy, unless, being a party or a privy thereto, he would have been prejudiced by it had the decision been the other way; and that judgments and decrees are conclusive evidence of facts only as between parties and privies to the litigation; nevertheless—

"It is not always a conclusive objection to the admissibility of a record as an estoppel or as a bar that the parties to the former action included some who are not joined in the second action, or vice versa. 'The fact that parties in the first suit are not identically the same as those in the second, when the first case was decided on the merits, and not upon an exception to joinder or nonjoinder of parties, is certainly no answer to the plea (of former recovery), otherwise, no matter how often a case be decided, the parties might renew the litigation by simply joining with them a new party.' 'The objection that the first action was between other parties is not well grounded, and has no basis in fact to rest it upon the principle of res inter alios acta. That principle applies where the party against whom the record is offered was not himself a party to it. In such case, the general rule is that the record is not admissible. But here this defendant was a party to that record, and the objection in fact is that other persons were also parties thereto. As we understand the rule, that single fact alone constitutes no valid objection to the admission of the record.'" (Black on Judgments, par. 543, and cases cited in support of the text.)

The complaint alleges that the oral rental contract by virtue of which plaintiff was in possession of the land from which he was ejected under the judgment of the justice of the peace was entered into with Mariano Tuason, and subsequently ratified by Demetrio Tuason acting for himself and the other defendants. Demetrio Tuason was the plaintiff in the action in the court of the justice of the peace, whether acting for himself alone or acting for himself and the other defendants is not satisfactorily disclosed, by the pleadings. The complaint in the present action alleges that he was acting for himself and his codefendants, but this allegation is put in doubt by the record itself, wherein Demetrio Tuason appears as sole plaintiff. But in either event, it is very clear that the facts alleged in the complaint in this action had they been proven in the former action would have been a complete defense in that action. The justice of the peace found that the oral contract on which plaintiff relies was a rental contract between the plaintiff and Demetrio Tuason, and held that it had been violated by the plaintiff by his nonpayment of rent. Manifestly the defendant Demetrio Tuason is entitled to rely on the judgment of the justice of the peace as a bar to this action for specific performance of that contract in so far, at least, as he is concerned. But, in the very nature of things, and under the allegations of the complaint, specific performance could not be decreed against the other defendants in this action unless judgment were rendered at the same time against this defendant. It is very clear,

therefore, that as to the principal relief sought, that is to say, the specific performance of the contract, the plaintiff cannot be allowed to resort to the transparent device of joining with this defendant new parties defendant in order to object to the admissibility of the record in the former case on the ground that the parties are not identical. As to the damages claimed for plaintiff's ejection, it is very clear under the allegations of the complaint, that unless the parties defendant to this action other than Demetrio Tuason, were privies to him as party plaintiff in the former action, the plaintiff has no cause of action against them for damages resulting from his ejection under the judgment entered by the justice of the peace. For if they were not privies, Demetrio Tuason was alone responsible for the institution and maintenance of that action. But if they were privies, the objection based on a lack of identity of parties has no foundation, and the former judgment must be held to be a complete bar to this action on the principle that both the parties and their privies were bound by the judgment in the former action.

We conclude that the trial judge erred in overruling the plea of res judicata filed in the court below, and that judgment should therefore be entered reversing the judgment entered therein, and dismissing the complaint, without special condemnation of costs in this instance. So ordered.

Torres and Trent, JJ., concur.

Mapa, Johnson, and Moreland, JJ., concur as to the dispositive part.

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