

**MIGUEL BERSES AND 318 OTHERS, PLAINTIFFS AND APPELLANTS,
VS. MARIANO P. VILLANUEVA, DEFENDANT AND APPELLEE.***G.R. No. 7309. October 10, 1913*

Ponente: TORRES, J.

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Appeal raised, through bill of exceptions, by counsel for the plaintiffs from the judgment of January 28, 1910, whereby the former judge of the Eighth District, the Honorable Grant T. Trent, held that the plaintiffs were not entitled, either jointly or severally, to an award for improvements or for losses and damages, and dismissed their complaint with the costs against them proportionately, and absolved them from the counterclaim filed by the defendant.

On November 20, 1908, counsel for the plaintiffs filed a written complaint with the Court of First Instance of Albay, against Mariano P. Villanueva, wherein it was alleged that each of the plaintiffs had been and still was in possession of a tract of 1,300 hectares of land situated in the Island of San Miguel, Tabaco, Albay, bounded on the north by the sea and the lands of Pedro Cornel, Candido Bona, Alejandro Broce, Teodora Bondal, Mateo N. and Mariano Bonaobra; on the east and south, by the sea; and on the west, by the lands of Jose Bombales, Gregorio Breza, Jose Buenconsejo, Juan Bueno, Anacleto Bedolio, Gregorio Rebollido, Alejandro Bonreales and Luis Buensalida; that each and all of the plaintiffs, in the belief that they were the owners of the said land, had thereon sown and planted grain and plants of different kinds, erected houses and other buildings and made other improvements, and planted coconuts, cacao, bananas, bamboo, nipa palm, coffee, lemon trees, sugar cane, abaca, anahao, gallang and caragomoy; that the names of each one of the plaintiffs and the total value of the plantings, crops, buildings and other improvements, were as follows: Miguel Berses, for the value of P22,382; Rufino Bognales, P6,325; Hipolito Bognales, P3,665; Valentin Buena, P1,866.50; Arcadio Biraquit, P14,154; Dalmacio Buena, P2,411; Ciriaco Bongalon, P1,314.50; Fabian Para, P3,258; Doroteo Brosola, P1,854; Francisco Buena, P4,335; Hermogenes Batis, P1,243.50; Ildefonso Buena, P3,827; Fermin Baina, P859; Pantaleon Buban, P1,556; Maximo Buena, P2,787.50; Lucio Para, P685; Romualdo Buebos, P1,111; Paulino Buena, P1,360; Fermin Broso, P1,300; Alberto Santos, P1,122; Eufasio Balinbing, P897.50; Norberto Broce, P154; Segundo Biraquit, P1,805.50; Bernardo Biraquit, P2,312; Ruperto Broso, P1,854; Pablo Bolima, P2,178; Fernando Buenconsejo, P864; Amaro Bonagua, P1,729; Sinforoso Madrid, P845; Leon Buison, P3,146.50; Vicente Borda, P1,726.50; Lorenzo Sarmiento, P662.50; Evaristo Cal, P576; Maximino Bola, P1,285; Agaton Bore, P1,264; Basilio Lanon, P135; Cornelio Buena, P4,654.50; Francisco Brutus, P1,730; Antero Borbe, P3,747; Doroteo Bueno, P333; Juan Brutus, P642; Jose Buena, P1,327; Cenon Lanon, P2,623; Jose Biñocot, P275; Angelo Bucaya, P3,363; Epifanio Cortesano, P3,117; Nicolas Bonagua, P1,043; Florencio Bieri, P290; Francisco Bolima, P938; Hipolito Vergara, P705; Jose Borbe, P258.50; Nemesio Cal, P440; Buenaventura Borcer, P459; Martina Bogay, P613; Graciano Bien, P230; Geronimo Camo, P965; Juan Bonagua, P1,036; Alejandro Bien, P3,094.50; Benito Bogñalbal, P513; Tomas Berlon, P2,559; Pedro Berlon, P1,284.50; Paulino Buena, P1,113; Sotera Bien, P588; Eustaquio Cortesano, P1,359.50; Hermogenes Contrata, P590; Vicente Bueno, P3,330; Juan Buñales, P1,374; Micaela Buñaga, P1,750; Jacinto Dato, P859; Candido Bondad, P1,246.50; Simeon Busing, P1,644.50; Arcadio Bonaobra, P1,046; Narciso

and Tomas Borboran, P2,371; Miguela Vista, P1,255; Silvino Vara, P800; Teodorico Brutas, P308; Raymundo Bongay, P633; Zuelo Bombeta, P178; Juan Bonagua, P6,962; Pedro Biron, P1,095; Teodoro Burac, P513; Maximo Bohgalon, P2,660; Petrona Bongon, P1,472.50; Petrona Bongosn, P315; Jacinto Brutas, P3,507; Felix Brutas, P1,771; Mariano Bodes, P876.50; Roman Cortesano, P2,093; Januario Busar, P1,169; Damaso Bonete, P4,433; Manuel Borbe, P788; Toribio Bonaobra, P2,040.50; Simeona Bien, P788; Petronilo Bradecina, P1,737; Roman Bolda, P689; Fausto Bredes, P1,919; Jacinto Basmayor, P4,630; Gregorio Prutas, P770; Eugenio Buela, P1,917.50; Sebastian Bordonada, P3,077; Hermenegildo Berlon, P188; Urbano Berlon, P5,568; Severino Borbe, P717; Faustino Duran, P593; Canuto Buñales, P4,088; Francisco Bitago, P1,509; Anastacio Bogñales, P1,474; Zacarias Bien P512; Juan Rolisan, P1,990; Clemente Relisan, P519; Teresa Bocaya, P471.50; Brigido Borbe, P708; Bonifacio Bondad, P1,516; Isaac Bontigas, P364; Prudencio Bolima, P1,311; Josefa Bredes, P767.50; EscoJastico Briquillo, P576; Narciso Balingbing, P962; Florentino Barra, P748; Juan Barra, P358; Basilio Borce, P889; Francisco Borac, P330; Rufino Bongay, P3,355; Juan Bueno, P1,504; Florentino Barra, P873; Juan Barra, P297; Pablo Brutas, P790; Mariano Agunday, P711; Mariano Brisuela, P454; Silyino Barra, P957; Lorenzo Bien, P506; Vicente Barra, P437; Julio Bugnalos, P781; Eulogio Brondo, P2,742; Albino Buevos, P661; Gabriel Bueno, P1,758; Apolinario Big-ino, P1,157; Leon Bueno, P555; Juan Borbe, P1,922; Marcos Bradecina, P7,371; Alberto Bredes, P5,825; Teofilo Burcer, P337; Hermenegildo Marquez, P477; Santiago Bola, P765.50; Mariano Bonagua, P2,022; Nicolas Buensalida, P1,015; Jacobo Buison, P1,641; Juan Bonagua, P1,299; Zacarias Berces, P2,651.50; Panta leon Bueno, P1,939; Candido Bondad, P3,734; Eulalio Bolima, P191.50; Arcadio Bueno, P628; Juan Flores, P1,325; Juan Brosola, P992; Juan Busmayor, P3,069; Marcelino Brosola, P662; Mariano Agunday, P2,774.50; Francisco Bueno, P1,786; Perfecto. Billa, P1,013; Victor Brosola, P6,059; Sotero Briquillo, P850; Valentin Baina, P1,112; Agaton Boragay, P970; Juan Buna, P589; Atanacio Busing, P840; Leoncio Bien, P496; Serapio Bueco, P770; Raymundo Bongay, P91; Valerio Bonganay, P563.50; Teodoro Jacob, P2,371; Susana Urnan, P716; Tomas Billa, P193; Pedro Bonaobra, P760; Antonio Barquin, P636; Jose Bien, P465; Pedro Corral, P350; Baldomero Bayobo, P722; Bernardo Gandul, P158; Basilia Boragay, P353; Pedro Boticario, P1,616; Maria Canon, P744; Maximo Blanquesa, P1,566; Manuel Broso, P244; Alberto Bongay, P274; Esteban Buela, P1,089.50; Fermin Bigcas, P524; Marcos Brutas, P1,281; Mariano Bolo, P366.50; Pablo Bonto, P2,633; Paulino Bueno, P579; Telesfora Profeta, P1,528; Claro Buela, P693; Mariano Bunao, P7,715; Mariano Bradecina, P3,127; Pablo Bringuela, P736; Feliciano Belgar, P1,211; Francisco Biblianeas, P464; Domingo Bongay, P2,506; Romualdo Balingbing, P1,163; Canuto Bonrao, P828; Rafael Bugñalbal, P1,177; Leon Bivaro, P1,718; Agapito Boton, P1,449; Jose Bobiles, P1,077; Martin Buela, P852; Geronimo Binaday, P535; Felix Boticario, P2,680; Maximo Boticario, P1,315.50; Anselmo Boticario, P2,929; Juan Bonita, P2,188; Luis Bosotros, P1,245; Francisco Buendia, P3,000; Hermenegildo Bola, P426; Francisco Butial, P443; Ciriaco Bulala, P950; Juan Bonaobra, P2,936; Joaquin Borleo, P1,433; Melquiades Blanquesa, P832; Emeterio Campit, P818; Pacifico Canoso, P406; Segundo Boticario, P777; Pablo Bosio, P500; Josef a Bungay, P1,072; Apolonio Buasan, P2,147; Emeterio Busing, P520; Marcelo Brondial, P978; Mariano Belenso, P,840; Dionisio Coruel, P1,460; Froilan Bondal, P3,262; Basilio Bombales, P664; Tomas Bosque, P1,159; Ambrosio Cal, P261; Toribio Canon, P391; Fausto Buesa, P412; Silvino Brondial, P1,061.50; Mariano Brondial, P743; Mateo Coruel, P541; Pedro Calising, P1,153; Santiago Bunao, P1,171; Pedro Belenso, P486; Fruto Bragais, P770.50; Francisco Canon, P544; Natalio Cañon, P660; Esteban Bradecina, P761; Roman Bonto, P526.50; Adriano Bordeos, P1,715; Simeon Blanquesa, P2,021.50; Andres Bringuela, P287.50; Esteban Bugñal-bal, P1,853; Leoncio Buela, P1,403.50; Basilio Cañon, P207; Victor Bombales, P111.50; Mateo Bringuela, P155; Anastacio Buenviaje, P548.50; Mariano Biron, P1,184; Simeon Biron, P1,110; Ciriaco Bongay, P363; Inocencio Brosola, P230; Micael Ribandor, P445; Irineo Bonagua, P3,277; Esteban Bonaobra, P660; Tomas Bocito, P145; Victoriano Bongay, P428; Modesto Brutas, P116; Mariano Brutas, P581; Cenon Brondial, P882; Claro Belgar, P347; Pedro Coruel, P1,137; Tomas Bueno, P1,965; Estanislao Boticario, P313; Laurencio Bosque, P509; Simeona Bongay, P4,709; Ambrosio Borcer, P603; Juan

Burac, P557; Antonio Boticario, P215; Meliton Belenso, P332.50; Victor Belenso, P1,384; Hermogenes Cal, P382; Sixto Brutas, P466; Macario Buico, P622; Isidoro Belangel, P2,677; Sergio Buisa, P581.50; Juan Bungay, P624; Victor Bungay, P740; Estanislao Bonaobra, P584; Ana Bonaobra, P317; Esteban Bungay, P1,763.50; Fortunato Buela, P1,528; Alvaro Boticario, P4,155; Mariano Briquillo, P468; Juan Bolo, P1,655; Isabelo Biblieaneas, P1,955; Arcadio Buela, P544; Gregorio Buragay, P1,184; Meliton Buela, P2,624; Victor Malagueio, P2,876; Timoteo Berlon, P746; Basilio Bonitis, P410; Faustino Burce, P588; Vicente Celon, P1,333; Doroteo Belange, P481; Alejandro Berce, P1,386; Agaton Berce, P761; Alberto Bonto, P601; Doroteo Boqueo, P2,799; Agapito Belses, P1,429; Cayetano Busing, P307.50; Teodorico Brutas, P175; Luis Buncay, P3,385; Juan Bento, P2,089; Natalio Canon, P435; Francisco Buelba, P408; Apolonio Buasan, P271; Jose Blando, P415; and Pedro Boticario, P2,359.

That each coconut palm was worth P5; each cacao, P10; each anahao, P1; each nipa, P1; each hectare of abaca, P100; each hectare of sugarcane, P100; each banana stalk, 50 centavos; each caragomoy stalk, P1; each gallang stalk, 50 centavos; each lemon tree, P1; each coffee plant, P5; and each clump of bamboo, P2; that the defendant, Villanueva, knowing that he was the owner of the land in question, did, with notoriously bad faith tolerate and allow each and all of the plaintiffs to continue to make their sowings, plantings, buildings, and other improvements in order that when terminated, he might appropriate the same to himself, to the plaintiffs' prejudice; that the latter, by reason of such bad faith on the part of the defendant, were jointly injured to the amount of P200,000; that he (counsel aforesaid) had set forth in the amended complaint that in the preceding one material errors were committed with respect to the names of some of the plaintiffs, though without specifying what they were; that, subsequent to the said complaint, Villanueva took possession of the land in litigation under the authority of a judicial order given in a final judgment, as a result of which the plaintiffs were ousted from the land and the defendant, Villanueva, appropriated to himself all the sowings, plantings, houses and other improvements, the subject matter of this suit; that the defendant had not paid the plaintiffs the value of the said sowings, plantings, houses and other improvements, which were worth P470,147, and much less the losses and damages aforementioned. Counsel therefore prayed that judgment be rendered by sentencing the defendant, Villanueva, to pay to the plaintiffs the sum of P470,147 and, in addition thereto, P200,000, as losses and damages, and the costs of the case.

The defendant, after the demurrer filed by him in answer to the amended complaint had been sustained, denied each and all of the allegations of the complaint in so far as they were not expressly and specifically admitted in his answer, and set forth that he admitted that some of the, plaintiffs had been in possession of the land concerned and were residents of the Island of San Miguel, but denied that they all were such and also the truth of the averments or allegations contained in the other paragraphs of the complaint, and, as a special defense, set forth that some of the plaintiffs had expressly refused to maintain the complaint in the present case; that the greater part of the alleged sowings and plantings were spontaneous and natural products of the land owned by the defendant; that the plaintiffs acted in bad faith and therefore were not entitled to any indemnity, for the possession which they claimed to hold over certain portions of the land in question was of a precarious nature, since they had no bona fide just title and a sufficient length of time had not yet elapsed to enable them to acquire the property; and that the subject of this suit was one that had already been tried in civil cases Nos. 29 and 33, as shown by Exhibits A and B. As a cross complaint and counterclaim he alleged that the plaintiffs, knowing that the defendant, Villanueva, was the owner of, and had obtained title from the state to, the land in question, did, in 1902 and against his will, enter thereon, and possessed themselves of and usufructed the same, in bad faith, until they were ousted by the sheriff in 1908 acting under the authority of a judicial order contained in a final judgment rendered in the said cases, Nos. 29 and 33; that the defendant was by such trespass caused losses and damages through the noncollection of the rents and products of said land during the time of its detention, at the rate of 50 centavos

conant, per the reasonable rental value of each hectare occupied by each one of the plaintiffs from the year 1892 until they were ousted in 1908; that the plaintiffs, being aware as they were of the defendant's right and of the title he held, prevented him from the enjoyment of the land and compelled him to employ the services of attorneys, who were required in the Court of First Instance and in the Supreme Court, thereby occasioning him losses and damages, in addition to other expenses, besides loss of time and prevention from cultivating the land and deriving profit therefrom, and that such expenses, losses and damages amounted to P20,000. He therefore prayed that the defendant be absolved from the complaint and that the plaintiffs be sentenced: (1) To pay P20,000; (2) to pay, each of them, 50 centavos per month for each hectare of land occupied by each of them from the year 1892 until they were ousted in 1908; (3) to keep perpetual silence with regard to the land in question, its sowings, plantings, and other improvements; and (4) to pay the costs of the trial.

Counsel for the plaintiffs, after entering an exception to the ruling admitting the defendant's cross complaint, presented a written answer to the special defense and to the cross complaint and counterclaim, and set forth that he denied each and all of the allegations contained in the special defense and in the so-called cross complaint and counterclaim, in each and all of their parts, and prayed that the plaintiffs be absolved from the said cross complaint and counterclaim.

By a written motion of May 20, 1909, counsel for the plaintiffs stated that, for the purpose of the best understanding and most correct judgment of the facts in this case and to avoid confusion, he considered it necessary and expedient that the court appoint a commission composed of three impartial persons who should proceed to count the houses, sowings and plantings, the subject matter of the plaintiffs' claim, including those of them that had disappeared, if any such there were and could be determined, and suggested that said commission could, should the court so order, count what pertained individually to each plaintiff, or merely the total number of such improvements, for it was necessary that the court should have an inspection made of the said houses, sowings and plantings as soon as practicable, in view of the fact that counsel had been informed that the defendant was causing them to disappear; that, should the court wish to consider the plaintiffs as one single person, they would waive their right to be considered individually and separately, for the purpose of such judgment as might be rendered in their behalf and the counting of the houses, sowings and plantings aforementioned, for they had agreed that, as soon as a favorable judgment should be rendered, they would divide among themselves the amount awarded them thereby, in a manner proportionate to their respective claims; and that, should the defendant object to the appointment of the said commission on account of expenses and the court decide that he could not rightfully be compelled to pay them, the plaintiffs would bind themselves to reimburse the same as costs upon the defeated party. He therefore prayed that the court appoint the said commissioners and have the inspection made, without awaiting the termination of the taking of evidence.

By an order of May 24 of the same year, 1909, provision was made among others for the appointment of two special commissioners, one by the plaintiffs and the other by the defendant, for the purpose of inspecting the 1,300 hectares of land on the Island of San Miguel and ascertaining and examining facts relative thereto, in order to enable them to use the same in case they should testify as witnesses in this suit, but without authority to present any report whatever as to the result of such inspection.

On page 62 of the bill of exceptions is found an agreement made by the attorneys for the litigants, in regard to the following points: That they admitted that the commission appointed for the taking of evidence might consider all the plaintiffs who had not testified up to date as if they had been presented as witnesses in this suit, with the exception of those in Albay, 35 in number, mentioned by name, who would be presented later, counsel for the defendant assenting that the plaintiffs not excepted should be deemed to have testified; that they had houses, sowings and plantings on the Island of San Miguel; that the improvements specified in the complaint were those

there made since 1891 and prior to 1906; that each witness should answer the following question: "Who did you believe was the owner of the land occupied by you on the Island of San Miguel, at the time that you built your house and made the sowings and plantings now claimed by you in the complaint?"; that during the time that they were building their houses, sowing, and planting, they were not obliged to suspend their work by Mariano Villanueva or by any other person in his name; that counsel for the defendant admitted that the said plaintiffs, those whose testimony was, by this agreement, to be considered as valid, might testify with regard to the value and number of their respective houses, sowings and plantings, specified in the complaint, and that such testimony should be given the same weight as if it had been taken before the commissioner in open court, should form an integral part of the record in this case and should be considered as having been given by the said plaintiffs individually or separately, but that this agreement was not to be interpreted in the sense that the defendant must admit the facts contained in such testimony. This agreement was approved by the commissioner, Luis Orteza.

After a hearing of the case and introduction of evidence by the parties, the court, on January 28, 1910, rendered the judgment aforementioned, exception to which was taken by counsel for the plaintiffs, who filed a written motion for a new trial. This motion was overruled by an order of February 26, 1910, excepted to by plaintiffs' counsel, and, an appropriate bill of exceptions having been presented, the same was approved and forwarded to the clerk of this court.

In March, 1902, case No. 29 was commenced in the Court of First Instance of Albay through a complaint for the recovery of possession made by Mariano P. Villanueva against Miguel Berses and nine other parties as the usurpers of a tract of land of the plaintiff's ownership situated on the Island of San Miguel. Before the complaint was answered the judge, by an order of April 18, 1903, directed that the case be consolidated with another in the same court, designated under No. 33 and prosecuted by the same plaintiff against Alejandro Brusola and three others, also occupants of the said land, for the same purpose of recovering possession of the property. Both cases being thus consolidated, their prosecution was continued as though they were a single one, at the instance of the plaintiff, Mariano P. Villanueva, and against the 14 defendants.

Later, by a motion of February 11, 1905, the attorney for the defendants requested the court to rule that the parties named in the complaint as the defendants, besides representing themselves, also represented the other persons interested in the case, under the denomination of "inhabitants of the Island of San Miguel," pursuant to section 118 of the Code of Civil Procedure, and alleged that the interested parties were not only those whose names appeared in the complaint, but also very many others who might number more than 3,000 persons, inhabitants, nearly all of them, of the said island, for both the former and the latter had had and still had a common and general interest in the pending suit as a matter of the concern of all. The judge, therefore, by an order of February 13 of the same year, directed that "under the denomination of 'and other inhabitants of the Island of San Miguel, Tabaco, Albay, P. I.,' the persons who had and have an interest in the 1,300 hectares of land in question, situated on the said island, shall be included as defendants."

The trial being had in all its proceedings, with the attendance of the Attorney-General in behalf of the Government of the United States which as a third party opposed the plaintiff's claim, and after the production of evidence by the parties, the court, on December 3, 1906, rendered judgment by finding that the land sought to be recovered belonged to the plaintiff, Villanueva, ordered the defendants to deliver to him the possession of the same, and absolved the plaintiff from the intervener's complaint, with the costs equally upon the defendants and the intervener. Counsel for the defendants appealed from this judgment and the appeal having been brought in second instance before this court, was affirmed by the decision of March 25, 1908.

In compliance with a writ addressed to the sheriff of the province and his deputies, proceedings were taken for the execution of the said final judgment and, among other mandates, the defendants were ordered to deliver the

possession of the land in litigation to the plaintiff, Mariano Villanueva, and to pay the costs; and, although it is alleged that all those who now appear as the plaintiffs in this case were ousted from the land, the proceedings had in execution show that notification was served on only 8 of the 14 persons expressly sued and whose names appear in the complaints of the previous consolidated cases Nos. 29 and 33, six of whom apparently were neither notified nor warned to vacate their respective lands; but, on the other hand, the record shows that many who do not appear expressly as defendants in the said consolidated cases were so notified, and, in the new complaint afterwards filed by Miguel Berses and 318 others who claim to be injured—a complaint which initiated this case, No. 943 of the court of Albay and No. 7309 of the calendar of the Supreme Court—it is alleged that all the 319 plaintiffs were ousted from the land recovered by Mariano P. Villanueva, now the defendant in the present case.

On the hypothesis, then, that all the land comprising the 1,300 hectares, the subject matter of the action for recovery, was entirely released and vacated by its deforciants and placed at the disposal of Mariano P. Villanueva, the owner thereof recognized as such by final judgment of the courts, it is to be presumed that, all the occupants of the said land were ejected and expelled therefrom, not only the 14 defendants in the action for recovery, but also the 305 usurpers of the land sought to be recovered by Villanueva as the owner thereof, notwithstanding that these 305 occupants of the property were not expressly sued in the action aforementioned nor was judgment rendered against them.

So that, of the 319 persons who figure in the present case as plaintiffs and demand indemnity for losses and damages and for the value of the improvements which they each had made on their respective portions of the land in question held by them up to the date when they were ousted therefrom, only 14 of them were sued by Mariano P. Villanueva through the action for recovery brought in the previous case and the other 305 were not heard therein, notwithstanding which they were ousted and compelled to vacate their respective lands by virtue of the aforesaid judgment which ordered that all the land be restored to its recognized owner, M. P. Villanueva.

Both in the judgment appealed from and in that rendered in the previous action for recovery, it was held that, in accordance with the evidence introduced in the one case and in the other, the 14 defendants in the first one were mere deforciants and possessors in bad faith of the respective portions of the land they were occupying comprised within the property belonging to the present defendant, Villanueva. inasmuch as not only those 14 defendants, but also the rest of the occupants of the land recovered in the previous suit, were well aware that the whole of the land in question, comprising an area of 1,300 hectares, belonged to the then plaintiff, Mariano P. Villanueva, who, since November 1, 1890, had held title thereto by composition with the state, which title was registered on June 13, 1891, while the 14 defendants, and doubtless the rest of the occupants of the land concerned in that suit, were absolutely destitute of any title such as might in any manner legalize and justify the possession or tenancy which they had been enjoying of their respective portions of the said land.

The Civil Code prescribes as follows:

"Art. 362. He who builds, plants, or sows in bad faith on another's land loses what he has built, planted, or sown, without right to indemnity.

"Art. 363. The owner of the land on which anyone has built, planted, or sown in bad faith may demand the demolition of the work or the removal of the planting or sowing and the restoring of everything to its original condition at the expense of the person who built, planted, or sowed."

"Art. 433. Any person who is not aware that there is in his title or in the manner of acquiring it any flaw invalidating the same shall be considered a possessor in good faith.

"Possessors aware thereof are considered possessors in bad faith."

If the plaintiffs had really been in possession of the land before the issuance of the title to the defendant, Villanueva, in November, 1890, they would, through the means of the notices and publications made in the place where the land is situated and of its measurement and survey, have had an opportunity to object during the course of the proceedings and present adverse claims in defense of their rights and interests.

The claim being restricted to improvements and to losses and damages occasioned subsequent to the grant to the defendant of the adjustment title proving his ownership of the said land, and after the termination of the administrative proceedings (in which it is presumed all the legal formalities were complied with and that the land, the composition of which was sought, was uncultivated royal land), and upon the issuance of the proper title to Mariano P. Villanueva, in November, 1890, he became the sole proprietor and tenant as owner of such land granted by the state through adjustment, inasmuch as the Government, in granting the ownership title to the said land, did so with the understanding that the latter was unappropriated and not in the legal possession of anyone.

Aside from the foregoing, there arises the question brought up by the defendant and decided affirmatively in the judgment appealed from, to wit, whether the claim for the payment of the improvements and the indemnity for losses and damages should have been the subject of a counterclaim and have been made during the previous suit brought for the recovery of the land on which such improvements were effected and the losses and damages were suffered by the plaintiffs, as by them alleged.

The first part of section 97 of the Code of Procedure in Civil Actions provides:

"Effect of omission to set up counterclaim.—If the right out of which the counterclaim arises exists at the time of the commencement of the action and arises out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or is necessarily connected with the subject of the action, neither the defendant nor his assignee can afterwards maintain an action against the plaintiff therefor, if the defendant omits to set up a counterclaim for the same."

In view of the terms and sense of the provisions just above quoted, it is undeniable and to be understood of course that the right of action and other rights alleged by the plaintiffs in this suit existed on the date when Villanueva, now the defendant, filed his complaint for the recovery of the land on which the plaintiffs allege they made the improvements, the value of which they claim, and suffered the losses and damages occasioned them; for, since the action brought by Villanueva had for its object the recovery of the land wrongfully detained by the plaintiffs, on the ground that he was the owner and proprietor thereof, and the 14 plaintiffs, the defendants in the previous suit, were unable to allege or present any title whatever showing that they had a better right of possession such as might outweigh and invalidate the composition title obtained by Villanueva for the said land, and, furthermore, because of the statements and averments made by the latter in his complaint for recovery, the defendants in that action, plaintiffs herein, ought to have understood from the beginning¹ that they would very likely be defeated in the suit, as occurred, and for this reason they should have set up a counterclaim in that case for the value of the improvements and the amount of the losses and damages demanded herein, inasmuch as such improvements and indemnity were necessarily connected with the suit for the restitution or recovery of the land claimed to have been improved, and with the results of the execution of the judgment awarding that recovery.

The 14 plaintiffs, the defendants in that previous suit, did not duly present the proper counterclaim, notwithstanding that, in answering the complaint in the action for recovery, they alleged that the value of the lands they possessed, owing to the improvements made by them thereon by plowing and cultivation, amounted to P300,000. Pursuant to the specific provisions of the section aforecited, this omission on the part of the plaintiffs bars them from presenting any claim whatever against the defendant for improvements.

With respect to the 305 persons, also plaintiffs in this case and who were not expressly sued in the previous one,

Nos. 29 and 33 consolidated, relative to the recovery of the land owned by the herein defendant, Mariano P. Villanueva, and in which judgment has already been rendered and executed, although they were in the same condition of possessors in bad faith as the other 14 plaintiffs who were the sole defendants in that previous suit, yet, since these 305 deforcians of the land in litigation were not cited or summoned to appear in the said suit, the final judgment rendered therein could produce no legal effect whatever on them nor affect those who were not in due manner actually cited or summoned to appear in that suit prosecuted through the action for recovery brought by the owner of the land, Mariano P. Villanueva, nor were they true parties defendant therein; therefore, in executing the judgment of recovery awarded against those 305 persons who legally were not parties defeated at suit, they were wrongly divested of the possession of their respective portions of land without due process of law, inasmuch as the case prosecuted against the 14 defendants and the judgment rendered therein awarding the recovery was not had against the said 305 persons, herein plaintiffs, who notwithstanding were ousted from and unlawfully divested of the property which they respectively held, even though as usurpers, without proper trial and judgment and without observance of the legal formalities established by the procedural law.

Section 114 of the Code of Civil Procedure, which treats of parties to actions, prescribes as follows:

"Every action must be prosecuted in the name of the real party in interest. * * *

"* * * all persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs.

"Any person should be made a defendant who has or claims an interest in the controversy or the subject matter thereof adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein.

"If any person having an interest in the subject of the action, and in obtaining the relief demanded refuses to join as plaintiff with those having a like interest, he may be made a defendant, the fact, of his interest and refusal to join being stated in the complaint."

In the document presented in evidence and found on page 95 of the first set of records in Case No. 29 of the court of Albay, the names of Miguel Berses, Saturnino Bon, Leon Buison, Basilio Buela, Alejandro Bognalos, Idelfonso Buera, Vicente Bolga, Jacinto Brotas, Alberto Beniste, Tomas Berlon, Alejandro Brusola, Fabian Bonagua, Mariano Bonagua, and Agustin Bonagua, appear as the sole defendants in that suit and it was alleged therein by their counsel that both they and others not mentioned in the record had a common and general interest in the case, and that it was impossible for them all to appear at the trial. He therefore requested the court to rule that the defendants named in the complaint represented not only themselves, but also the rest of the parties interested in the suit, under the denomination of "inhabitants of the Island of San Miguel," in accordance with the provisions of section 118 of the Code of Civil Procedure.

Notwithstanding that the said defendants' counsel did not state that all the inhabitants of the Island of San Miguel held in common and pro indiviso all or a part of the land claimed by its owner, Villanueva, the court, by an order of February 13, granted the motion and directed that such persons as had and might have an interest in the 1,300 hectares in question should be included in the case under the denomination of "and other inhabitants of the Island of San Miguel, Tabaco, Albay," and this, despite the fact that it was to be presumed that each one of the 319 occupants of the property held separately his respective portion of land independently of the rest, so that they did not have a common interest, but a separate and distinct one with respect to each parcel of land held.

This ruling is undoubtedly grounded on the provisions of the section aforesaid, No. 118 of the Code of Civil Procedure, invoked by counsel for the said 14 defendants in that terminated suit; but this court does not agree nor can it accept the judicial criterion which determined the ruling above mentioned, since the provisions of the law

refer to cases where a considerable number of persons have a common and general interest in a specific thing and in the trial relating thereto it is impracticable to bring them all before the court. The provisions of section 118 above mentioned are not applicable to a case where each of the persons who should be summoned as defendants in an action brought by a single plaintiff has only a special or particular interest in a specific thing completely different from another thing in which another of the defendants has a like interest, although each of them has the same or analogous reasons and is able to allege the same grounds to impugn the complaint wherein claim is made for the restitution or recovery of all the parts of a property.

Each one of the 319 defendants in the said action, No. 29, prosecuted by Mariano P. Villanueva, was in possession of a parcel or portion of the land comprised within the metes and bounds of the 1,300 hectares of land acquired by the plaintiff, Villanueva, under a composition title with the state. Each one of them, according to the evidence taken in that suit, was a usurper of, or mere trespasser on, the respective portion of land held by him, and inasmuch as none could prove the just title under which he claimed and all of them were in possession with the purpose of appropriating to themselves the respective portions of land occupied by them individually, consequently they all had the same status with respect to the action for recovery brought by the sole owner of the land. But it is no less true that each one of the said 319 defendants held, on the date of the complaint for recovery, a parcel or portion of land completely distinct from the parcel or portion held respectively by each of the 318 other defendants, and each of them, at the commencement of the action, might have alleged a right or special ground which the others could not plead or did not have. The 14 persons who were summoned to appear at court and were defeated in the suit relative to the possession of their respective portions of land might have been able to allege grounds and reasons completely distinct from those which might have been alleged by the other 305 parties who were not summoned and were afterwards, as a result of the final judgment rendered against the sole 14 defendants, ousted from the respective portions of the land they were holding. Some of them might have alleged ordinary or extraordinary prescription, while others perhaps could have shown no right except such as derives from mere possession without title whatsoever.

Furthermore, the said 319 persons, the plaintiffs in this case, were not coheirs or coowners of anything held in common among them, nor did they possess jointly and pro indiviso the 1,300 hectares of land of the Island of San Miguel, but each one of them separately held his respective portion of land and each one was sued for the restitution of what he was wrongfully withholding from its rightful owner, according to the demand made by the latter solely against 14 of them. Each one, in a different manner, might have alleged and proved his respective right in the distinct portion occupied by him. Therefore it may not be averred that they all had an identical interest and based their possession on precisely the same grounds, for each one might have had distinct interests and rights from those of the rest and each one of the 305 persons who were not parties to the suit might perhaps have alleged and shown better proof than that adduced by the 14 defendants who were defeated in that action concerning the respective portion of land which they each occupied.

Considering, then, that the aforecited provisions of section 118 of the Code of Civil Procedure are not applicable to the present case, as they relate to a common and general interest in single specific things and not to complex and distinct ones, and that, for the reasons aforestated, it was improper to have considered as defendants the 305 persons who were not summoned and did not intervene as parties in the said case No. 29, the final judgment therein rendered could not legally have been executed against the said 305, and therefore, by their being expelled from the tenancy of their respective lands by virtue of such judgment which in no wise could affect them, they were unlawfully despoiled of their possession. Consequently, though they are not entitled to lay any claim for improvements made without good faith on the respective parcels of land they occupied, they have, however, an incontestable right to indemnity for the damages occasioned them as a result of the violent dispossession to which they were subjected in being ousted without previous trial from the respective portions of land they were

occupying.

The record does not show, however, the amount and importance of the damages suffered by each of the said 305 persons, for by the evidence adduced in this case it has neither been proven nor shown what kind of damages were occasioned to them by the execution of the said judgment ordering the restitution of the land sought to be recovered, nor what was the amount of such damages with respect to each one of the interested parties. It is therefore expedient for the purpose of justice that a rehearing be had and new evidence taken therein conducive to prove the said two points in relation to each one of the plaintiffs.

With respect to the counterclaim made by the defendant and disallowed in the judgment appealed from, since the latter entered no exception to such absolutory finding of the trial court, no cognizance thereof can be taken by us.

For the foregoing reasons, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, it is proper to affirm the said judgment, as we do hereby, with respect to the aforementioned 14 defendants concerned in the said case, Nos. 29 and 33 consolidated, each of whom shall pay one of the 319 parts into which the costs of both instances are considered to be divided; and the said judgment is reversed as regards the other 305 plaintiffs, whose names appear in the complaint. The record shall be remanded to the court of its origin, accompanied by a certified copy of this decision, in order that it may proceed to reopen the case with respect to the aforesaid 305 plaintiffs who were not parties defendant in the previous one, No. 29, and, after amendment of the complaint with respect to the damages that may have been occasioned by the execution of the judgment of recovery in so far as they were thereby affected, to take evidence relevant to the points above specified, and finally to render such judgment as the law and the evidence require. So ordered.

Arellano, C. J., Johnson and Carson, JJ., concur.

MORELAND, J., concurring:

With respect to the plaintiffs, except those designated as "the fourteen," the judgment should be set aside and the cause returned for trial upon the merits.

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