

**THE NON-CHRISTIAN FABIAN, PLAINTIFF AND APPELLANT, VS.
SABINO PACULAN, DEFENDANT AND APPELLEE.***G.R. No. 7720. August 05, 1913*

Ponente: TORRES, J.

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Appeal by counsel for the plaintiff, through bill of exceptions, from the judgment of November 8, 1911, whereby the Honorable Dionisio Chanco, judge, absolved Sabino Paculan from the complaint, without special finding as to costs.

On November 9, 1910, counsel for the non-Christian named Fabian filed a written complaint in the Court of First Instance of Ilocos Sur, alleging that the latter is the owner and possessor of a parcel of land acquired by homestead entry No. 3051 and situated in the place called Guisit, barrio of Sideg, municipality of Bangued; bounded on the north by the land of Sabino Paculan, on the east by a watercourse, on the south by Mount Gaco and the land of Cirilo Urbano, and on wife west by Mount Datag; that the complainant has been in public and peaceable possession of the said parcel of land, with residence thereon, having cleared it and been cultivating it since 1908; that on March 9, 1910, the defendant unlawfully seized the cultivated part and destroyed dikes raised thereon, thereby causing him damages to the extent of P50; that, subsequently to that date, the plaintiff extra judicially recovered the land and planted rice thereon, but the defendant again disturbed him by alleging claims contrary to the plaintiff's rights and performing on the land acts of a real owner and possessor thereof; that the defendant's claim of ownership to the said land has no legal foundation, for he has no legal right whatever thereto. Exhibit A is attached to the complaint, which prays that judgment be rendered in plaintiff's behalf by declaring that the defendant has no legal right or title to the land concerned and that he be sentenced to hold his peace forever, to pay P50 for losses and damages, and the costs.

In connection with a motion for the issuance of a preliminary injunction against the defendant to enjoin him from harvesting or reaping the rice sown on the land, counsel for the plaintiff presented a letter from the Director of Lands, dated at Baguio on April 27, 1910, and other documents relative to the said land granted as a homestead, together with a receipt issued in the office of the Director of Lands for the payment made of P10 as registration fees; but by an order of November 22, 1910, the court denied the motion and, in view of the agreement had between the parties, directed that the products of the land be equally divided between both parties.

The demurrer filed to the foregoing complaint having been overruled, counsel for the defendant denied in his answer each and all of the allegations thereof and set up as a special defense that the land in question belongs, exclusively to the defendant; that the latter had inherited it from his deceased fether, who had acquired it by purchase in 1901 from Pio Palmares or Palmones and others, heirs of Pedro Avila Mariano; that the latter during his lifetime had held the property for about forty years; and that the plaintiff by bringing this action had caused the defendant losses and damages in the sum of P150. He therefore asked that the defendant be absolved from the complaint and the plaintiff sentenced to pay P150 for said losses and damages, and the costs.

The case having come to trial, with the production of evidence by the parties, the court rendered the judgment aforementioned, whereupon counsel for the plaintiff excepted, and asked for a new trial. This motion was overruled, exception to the ruling was taken by the appellant, and the appropriate bill of exceptions was presented, approved, and forwarded to the clerk of this court.

This litigation concerns the ownership of a piece of Government land granted as a homestead to the plaintiff under the provisions of Act No. 926, Public Land Act, and of possession whereof he was deprived by the defendant, Sabino Paculan, who seized the property.

Against the petition of the plaintiff, Fabian, a non-Christian Igorot, that it be finally held that the defendant, Paculan, has no right nor legal title in the said land of which the former claimed to be the owner and possessor as the homesteader thereof, the latter objected that the property in question was of his exclusive ownership, inasmuch as he had inherited it from his deceased father, Felipe Paculan, who himself had acquired it by purchase in 1901 from Pio Palmares or Palmones and others, as heirs of Pedro Avila Mariano, and that the latter during his lifetime had held it for some forty years.

This allegation of the defendant does not appear to be sustained by the oral and documentary evidence introduced by him, for the record does not show that the land in litigation was comprised in the possessory information title obtained and inscribed in the property registry of Abra on August 2, 1895, and exhibited by the defendant, both because its conditions are different from those of the lands mentioned in the said information and because the boundaries of the property in question are distinct from those recorded as pertaining to the several parcels of land concerned in the aforementioned possessory title; from all of which it is concluded that the defendant has not duly proved the identity of the land which he alleges he purchased from the heirs of Pedro Avila Mariano, nor that the land acquired by him was that usurped from the plaintiff, which was mostly covered with forest.

The defendant's testimony has neither corroborated his averment, nor explained or supplied the deficiency of his documentary evidence. On the contrary, the record discloses that not all of those said to be the heirs of the deceased Pedro Avila Mariano took part in the sale of the land claimed by the defendant Paculan to have been acquired by him, and this fact is affirmed by Miguel Palmones, one of the said heirs; and Pio Palmones, not Palmares as appears in the document, Exhibit A, of the defendant, translated on page 71, stated under oath on page 25 that the land in question was not what was sold by him and his coheirs to Felipe Paculan, the defendant's father, for this latter tract was planted in vegetables and was situated northeast of the land in dispute, from which it was separate and distinct.

From the foregoing facts it is concluded that the land in question, obtained as a homestead from the Government by Fabian, the Igorot, is lawfully in the possession of the grantee, who was wrongfully deprived thereof by Sabino Paculan, although Paculan had no right whatever in the property, for he did not prove that it belonged to him or that he duly possessed it, yet he proceeded to usurp it to the plaintiff's detriment.

The rights acquired by the grantee, Fabian, in the disputed land are unquestionably sanctioned by Act No. 926, and once his application was accepted by the Director of Lands it must of course be presumed that Fabian's petition for the registration of the said land as a homestead was made out in conformity with the conditions prescribed by law, and, that the land sought was not occupied by any other person, for, after payment of the sum of P10 fixed by law, entry was made in the proper register of his petition and of the area of the land he had applied for.

The record shows that the Director of Lands transmitted five certified copies of various communications issued by his office, relative to the homestead grant made to the plaintiff Fabian. On November 10, 1908, he states to the applicant, Fabian, that he transmits therewith to him official receipt No. 195346 for the P10 paid as fees for the

registration of his application for homestead, No. 6151; on April 27, 1909, he informs the plaintiff, Fabian, that his homestead application for the land situated in the barrio of Sideg, pueblo of Bangued, had been examined and appears to comply with all the requirements of the law, and that the chief of the Forestry Bureau has certified that the said land is more valuable for agricultural than for forestry purposes, and that, consequently, his application has been approved and filed among the records of the office as homestead entry No. 3051, the writer advising that the applicant should, in all future communications addressed to the said department, make reference to the aforesaid registry number, 3051, and inviting the applicant's attention to paragraph 6, page 10, of the attached circular, which treats of residence on and cultivation of the land. In the communication of January 14, 1910, addressed to Sabino Paculan, the Director of Lands informs him that, after due investigation of his protest against the registration of the homestead applied for by the defendant, Fabian, it appears that the parcel of land sought by the latter is virgin Government land and has never been occupied or cultivated by any one, except now by the grantee, Fabian, wherefore it is the understanding of the Bureau of Lands that the said Paculan's opposition is defective and absolutely without good grounds and therefore rejected on this date, and that when Fabian shall have complied with the requirements of the law, he will in due season be issued the proper title of ownership to the land. On the same date, January 14, the Director of Lands informed Fabian that the adverse claim made by Sabino Paculan had been denied, and advised Fabian to continue in his possession of the land and to comply with the requirements of the law relative to its cultivation and residence thereon and that in due time he would be issued the appropriate ownership title thereto; and on the 5th of December of the same year, 1910, the same official, replying to a letter written by Fabian on the preceding 28th of November informs him that, in view of the fact that the latter was prohibited by the Court of First Instance from entering upon the land in question, the Bureau of Lands could take no action whatever in the matter until the said court should render a decision in the premises and that, should the judgment be adverse to him, proceedings would then be instituted against Sabino Paculan in accordance with the provisions of section 61 of Act No. 926.

So, it is an absolutely indisputable fact that Fabian, the plaintiff, was in lawful possession of the land which was granted to him by the Government pursuant to the Homestead Act until and up to the time that the defendant, Sabino Paculan, usurped the property and deprived him thereof; and although the plaintiff, Fabian, was not yet the owner in fee simple of the land, for the reason that the five years' period prescribed by law had not elapsed to have caused issuance to him of the proper ownership title on the 9th of March, 1910, the date of the usurpation, nevertheless it is unquestionable that he was the sole lawful possessor of the property, deserving of the protection of the law and the courts, inasmuch as this land belonging to the Government was held by him through an express grant with the expectation that if, for the period of five years fixed for the purpose, he complied with the conditions prescribed by law, he would be issued the appropriate property title as absolute owner of the land concerned in the said grant.

During the lapse of this period, and provided that the grantee fulfills the conditions imposed by law, among them those of residence on and cultivation of the land (condition which Fabian had been complying with, as shown by the record, until he was disturbed and dispossessed by the defendant) the plaintiff, Fabian, is the sole lawful possessor of the land as such grantee of the Government, the original owner of the property, and upon these premises he is entitled to the protection of the courts against all encroachment upon his rights.

The usurper, Sabino Paculan, was unable to allege any right whatever to support his forcible possession of the land in litigation, once his adverse claim filed in the Bureau of Lands against the application for homestead made by the plaintiff, Fabian, had been rejected for absolute lack of substantial grounds. Yet, notwithstanding this administrative decision, he still boldly continued wrongfully to detain the land, depriving the plaintiff of possession, and afterwards to maintain the present suit by means of oral and documentary evidence completely inadequate and impertinent, and in no wise has he succeeded in proving that the said land was already under

cultivation and was not unappropriated land covered with forest, for, on the contrary, it was proved that the property which he stated he had purchased from the alleged heirs of the deceased Pedro Avila Mariano was a cultivated tract of ground planted in vegetables and entirely different from the land granted to the non-Christian, Fabian, by the Government as a homestead.

By acting in the reckless way he has, the defendant has made himself liable for the losses and damages he has caused the plaintiff.

For the foregoing reasons, we reverse the judgment appealed from and hereby sentence the defendant, Sabino Paculan, forthwith to restore and deliver the land in question to the non-Christian, Fabian, to pay the latter the sum of P50 for losses and damages, and to pay the costs of both instances.

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

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