1 Phil. 150

[G.R. No. 32. March 03, 1902]

RAMON FECED, PLAINTIFF AND APPELLEE, VS. MARIANO ABELLA, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

In the present case we find it necessary to determine bat one question, which is as follows: Will the summary writ of recovery (*interdicto de recobrar*) lie against one who is not the party committing the ouster, but is a third party to whom the latter has delivered the realty? The law upon this point has undergone some radical changes. The annotator of the publication La Publicidad, speaking of law 30, title 2, partida 3, says; "The summary writ of recovery introduced by the canonical law, is much more advantageous than the Roman writ '*unde vi*,' because, among other reasons, the former is a real action and will lie, therefore, against any possessor of the thing, while the latter is personal and is directed only against the party who ejects or ousts. For this reason the latter disappeared in practice and there is used only the writ of recovery." The Law of the Partidas declares expressly that the writ will lie against the ousting party or a third person who has received the realty with knowledge of the ouster. There existed likewise in the Roman law another writ called "*utrubi*" which might be directed against any person whatsoever, even though he be a possessor in good faith, provided that the plaintiff must prove that during the preceding year he had possessed the realty for a period greater than that of the possession of the defendant. (Revista de Legislacion y Jurisprudencia, vol. 81, p. 27.)

All of these writs have been abolished by the Law of Procedure of 1855. The Law of the Partidas and the canonical writ disappeared; they were replaced by the provisions of article 724 and the succeeding articles. In this article there is no declaration that the action is a real action against any person; the law does not state that the writ will lie against the disturbing party or a third person who has entered into possession of the realty with

knowledge of the ouster. The omission in this place of some such provision when the same formerly had formed a part of the Law of the Partidas is an almost conclusive proof that the intention of the legislator was to repeal such law.

In accordance with article 724 it should appear from the complaint "(2) That he has been disturbed in this possession or tenancy, designating the person creating the disturbance." In all of the following articles when there is mention made of the person against whom the writ is directed reference is made only to the party disturbing the possession. (Boletin de la Revista General de Legislacion y Jurisprudencia, vol. 40, p. 530.)

The procedure of the two writs having been reformed and made one, and included in a single section of the Code of 1881, promulgated in the Philippines in 1888, the word " *despojante*" ("disturber") is no longer applied to the writ of retention and in its place was substituted the word "*demandado*" ("defendant"); but the said word still remains in that part of article 1640 which is expressly applicable to the writ of recovery. According to the Code of Civil Procedure for the Philippines it is necessary that one fact appear from the complaint "whether said acts were done by the defendant or by another at the instance of the defendant." (Art. 1634, No. 2.) It appears to us that this wording expressly limits the action to two persons—he who commits the disturbance and he who has ordered the same—and necessarily excludes the idea that the action can be directed against a third person who is found in possession of the realty within the year. Manresa says: "The action must be directed always against the true author of the disturbance." (Comentarios de la Ley de Enjuiciamiento Civil, vol. 6, p. 140; judgment of October 11, 1898.)

In no way can it be inferred that this writ, such as it exists in the Code last mentioned, is a real action. By the express terms of the Code (art. 1638) the court is prohibited from admitting evidence concerning the title to the realty in question. Article 1640 says: "The parties shall have reserved to them all rights which they may have to the property or to the definitive possession thereof, and they may enforce the same in the appropriate action." The fact that the plaintiff is not required to present any title in justification of his claim indicates that it can not be a real action, for the reason that it is difficult to conceive of such action without evidence relating to the title. If we should decide that the writ might be directed against a third person we should have to hold that it would lie even against one who had no knowledge of the ouster. The Law of the Partidas excluded such person, but nothing exists in this law which would justify us in making such an exception. We should have to hold that if a person buys real property from another wlio was in possession and held a perfect title to the same duly recorded, and after acquiring the same enters into possession thereof, the

new purchaser might be summarily evicted by a person without any title or claim of title to the realty who would be able to prove that within the year he had had the tenancy of said property and had been ousted from the same by the former owner. We can not give our assent to any such doctrine.

There remains for us to determine whether the defendant is the person who actually ousted the plaintiff from his possession. From the proofs adduced it is evident that the properties were attached by the so-called government of Malolos; the agents of this organization took possession of the properties and subsequently delivered them to the defendant. The questions directed by the plaintiff to all of the witnesses who testified in his behalf take this fact for granted. The question is as follows: "Whether Abella took possession after the raising of the attachment levied upon said properties by the alleged Filipino government." Nicolas Vivente Ortiz, as a witness called by the plaintiff, testifies that "the only thing which he knows is that said properties were attached by the Filipino government, but he does not know whether or not Mariano Abella took possession of the same." The plaintiff introduced a letter dated November 21, 1898, in which the local chief of Iriga notified the resident provincial chief that on that very day he had released the deposit of the attached properties and had delivered the same to the agent of Abella. This letter having been introduced by the plaintiff we have the right
to presume that it refers to the properties under consideration here. There is no proof whatever in any part of the record that Abella has ever ousted the plaintiff from these properties.

But the plaintiff alleges that the defendant has confessed the ouster in his answer, or has failed to deny the same. In view of the fact that such an admission is directly contrary to the evidence, we should not consider the same as made unless the answer clearly discloses such admission. It is true that he admitted clearly in his answer the possession of the defendant in the capacity of administrator, but this is not the question under consideration. Is it admitted that the plaintiff was ousted by the defendant?

The answer, after alleging that by virtue of the attachment levied by the Spanish Government these properties were usurped by the plaintiff, states: "And upon restoring to the heirs of the father of my client his property which had been attached there were delivered to him these properties." The use of the words "restore" and "deliver" in this clause can not be reconciled with the idea of a forcible ouster by the heirs of Sefior Abella. These words clearly indicate that some third party intervened between Feced and Abella, depriving the former of the properties and delivering the same to the latter. This

interpretation, as we have seen, is completely in accord with the facts as they have been established by the evidence. This clause is a sufficient denial of the ouster alleged in the complaint. For the foregoing reasons we decide:

(1) That the summary writ of recovery lies only against the ousting party and not against a third person who has received the realty from the former; and

(2) That the evidence in this case discloses that the defendant is not the ousting party.

The judgment, therefore, is reversed and the defendant absolved from the complaint without special ruling as to costs in either instance. It is so ordered.

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

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