

1 Phil. 609

[ G.R. No. 483. December 31, 1902 ]

**DAMIAN HERMITANO, PLAINTIFF AND APPELLEE, VS. MARCELINO CLARITO,  
DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**MAPA, J.:**

The plaintiff alleges that the municipality of Carmona conveyed to him on December 4, 1897, a certain piece of land, the property of the township, in payment or remuneration of certain services rendered by him in the years 1895 and 1896; that since that time he had quiet and peaceable possession of said lands as owner thereof until the 28th day of April, 1900, on which date the defendant, as local president at that time of the said town, without authority to do so, ousted him from his possession, and notified the tenants of the land that from that date henceforth they were to recognize him, the said defendant, as owner of the lands, in his capacity as president of the town. Upon these facts, and availing himself of the action of restitutory interdict, the plaintiff prayed the court that he be restored to the possession of the land from which he had been ousted and that the defendant be condemned to the payment of damages and to the costs of the action. The complaint was filed on the 17th of April, 1901, and contained a description of the land in question as to its area, location, and boundaries.

The action having been prosecuted through its various stages, the Court of First Instance entered judgment in favor of the plaintiff, granting him the relief prayed for by restitutory interdict, together with other relief proper in the premises, against which judgment the defendant appealed to this court.

Four witnesses testified for the plaintiff in the preliminary investigation, and three witnesses testified at the trial, all seven having unanimously affirmed that the facts related in the complaint are true, both with respect to the quiet and peaceable possession of the plaintiff and with respect to the ouster by the defendant. Two of them expressly stated that

the latter had been in possession of the land since the date on which he made demand upon the tenants as municipal president of Carmona to attorn to him as the owner of the land, and to deal with him in all matters concerning expenses and seed for the cultivation thereof. The fact that three of these witnesses were unable to recall the exact date of the ouster—affirming, however, that it took place some time in the month of April, 1900—does not diminish the probatory force of their testimony for the purpose of proving the facts upon which the complaint is based, because, considering this testimony in relation with that of the other witnesses, who affirmed that the ouster was effected on the 28th of the said month of April, we can not fail to conclude that this date has sufficiently been proven, by reason of the fact that all the witnesses refer to the same act, the testimony of each serving to corroborate that of the others.

The conveyance of the land in question by the municipality of Carmona to the defendant has also been proven by a certified document (p. 54 of the record), which also contributes to give greater strength, although indirectly, to the grounds of the complaint, inasmuch as it demonstrates the origin of the possession alleged by the plaintiff to have been enjoyed by him.

The defendant does not deny the facts alleged in the complaint, but, on the contrary, admits their truth by his statement (p. 27) that *the act which occasioned the ouster* (these are his own words) took place on the 1st of April, 1900. It was for the same reason, doubtless, that he offered no evidence whatsoever to offset that of the plaintiff with respect to the fact of the former's possession of the land and the ouster by the defendant.

The only thing to which the defendant did not agree with respect to this point is the date on which the ouster took place. This he asserts occurred on the 1st day of April, 1900, and not on the 28th, as asserted by the plaintiff.

If the true date were the first mentioned, the result would be that when the complaint was filed, on the 17th of April, 1901, more than one year had expired since the date of the ouster, in which case the action for the recovery of the possession by means of restitutory interdict would have been barred by the statute of limitations, and consequently the complaint would have been dismissed, in accordance with the provisions of article 1635 of the Code of Civil Procedure. Such, in effect, is the defense upon which the defendant principally relies to destroy the action instituted by the complaint.

For the purpose of proving that the ouster took place on the 1st of April, 1900, the

defendant filed a certified copy (p. 50) of a resolution passed on that date by the municipal council of Carmona, establishing a new system for the cultivation of the town commons, which, under a long established custom, to use the words of the resolution, was ceded in usufruct to the members of the municipal council of the town for the period of their incumbency of that office. It was doubtless intended to show by this that the plaintiff was deprived of his possession by virtue of this resolution, and on the same date of its passage, which, however, has certainly not been proven in any way in the course of the trial.

Furthermore, it is self-evident that the resolution, per se, could not have produced the effect de facto of depriving the plaintiff of his possession. To that end it was necessary that the resolution be executed by some subsequent act, which act, according to the unanimous testimony of the four witnesses, was effected on the 28th of April, 1900. From this date to the 17th of the same month in the year 1901, on which date the complaint was filed, the year had not expired as contended by the defendant.

The defendant in the second place alleges that the conveyance of the land by the municipality of Carmona to the plaintiff was void, and therefore could produce no legal effect, as several decrees of the General Government of the Philippines, which appear in the record, expressly prohibit the alienation of the common lands of the said municipality for any cause whatsoever.

This allegation is wholly irrelevant, inasmuch as the question in issue here is not the legality of the title by which the plaintiff possesses the land in question, but concerns solely and exclusively the fact of his possession. Whether the conveyance by the municipality of Carmona was valid or not, the fact remains that in consequence thereof the plaintiff was given possession of the said lands, and continued to possess them quietly and peaceably and as owner thereof for a period of over two years, until he was ousted by the defendant upon his own authority in April, 1900. The plaintiff was entitled to have this possession respected until such time as he might have been defeated in the proper action, even if it be true that the deed by which the land was conveyed to him was void. Even if he had been absolutely without title, with nothing more than the naked possession de facto of the land, under article 446 of the Civil Code he was entitled to have this possession respected.

In accordance with this principle the Code of Civil Procedure affords a remedy by restitutory interdict not only to a possessor under a more or less valid title, but even to those who have only the naked possession, if they are despoiled thereof. For the purpose of directing a restitution in such a case it is unnecessary to consider anything further than the

fact of the possession and the ouster. Hence no evidence should be admitted in the trial other than that referring to these two points, and any evidence not concerning these issues should be rejected by the court on its own motion. (Arts. 1633, 1634, and 1638.)

We therefore affirm the judgment appealed, with the costs to the appellant. So ordered.

*Arellano, C, J., Cooper, and Smith, JJ., concur.*

*Torres, J., disqualified.*

WILLARD, J., with whom concurs LADD, J., *dissenting:*

We dissent from this opinion.

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