

2 Phil. 695

[G.R. No. 1366. November 18, 1903]

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. GABRIEL FUSTER,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The defendant was convicted in the court below of the crime of usurpation and condemned to pay a fine of 2,500 pesetas.

Article 521 of the Penal Code, which punishes this crime, provides as follows:

“He who, by the use of violence or intimidation, shall take possession of any real property or usurp a real right belonging to another, shall, in addition to the penalties which he may incur because of the use of violence, pay a fine equal to from 50 to 100 per cent of the profits which he may have thereby received, but in no case less than 325 pesetas. If the profit should be such that it is impossible to determine the amount, then the penalty shall be a fine of from 325 to 3,250 pesetas.”

Under this article, among other requisites which are essential for the existence of the offense of usurpation, it is necessary that the real property or the real right, which is supposed to be the object of this crime, be the property of another. In the absence of proof of this fact, no conviction can be had upon an information for this offense.

In the present case the evidence for the prosecution deals solely and exclusively with the possession and not the ownership of the land alleged to have been usurped by the defendant. All the testimony for the prosecution tends to show the fact, and nothing more than the fact, that the land in question was in possession of Dofia Carolina Gomez de la

Serna and others at the time of the defendant's forcible entry therein. Furthermore, it appears that the possessors did not make any claim to the ownership of the said land, but only to its possession. Dofia Carolina herself says that this land "does not belong to anybody," and that, although she is occupying it, it is only because she is in possession of it. There is, therefore, no evidence that the land is the property of those alleged to have been injured by the offense charged.

On the other hand, the defendant offered to prove, by authentic documents, that he was the lawful owner of the land in question. This evidence was rejected in the court below. In this the court erred, for it unquestionably is an error to exclude proof of the ownership of property in litigation when, as in the case of usurpation, this ownership constitutes a necessary and indispensable element for the determination of the defendant's guilt or innocence. If the defendant herein had shown that he was the owner of the land in question, there would have been no ground on which he could have been convicted of the offense charged, because no one can, in a legal sense, be guilty of the usurpation of his own property. The law requires that the real property or the real right seized be the property of another, in order that the crime of usurpation may exist.

The error of law into which the court fell in refusing to admit the evidence of ownership offered by the defendant, and against which ruling the defendant duly excepted, would be a sufficient ground for remanding the case for a new trial. We do not, however, consider it necessary to do this, in view of the fact that the prosecution has not proven that the land alleged to have been usurped was not the property of the defendant. The burden lay with the prosecution to prove this fact, and, having failed to do so, we must acquit the defendant, even in the absence of any evidence in his behalf, because of the presumption of innocence to which every defendant is entitled until proven guilty.

We therefore reverse the judgment appealed and acquit the defendant, with the costs of both instances *de officio*. So ordered.

Arellano, C. J., Torres, Cooper, Willard, and McDonough, JJ., concur.

Johnson, J., did not sit in this case.

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