

was or ought to have been such as is required by the Rules to be in the form prescribed (Appendix, part ii., sec. vi.), then it would be a suit for sale with a claim for immediate possession pending the sale; it would be more than a suit for the recovery of land, and neither the District Court nor any County Court would have jurisdiction.

The writ was indorsed for an order that the defendants do forthwith deliver up possession. The plaintiffs' claim was simply to recover possession. That, I think, is only "for the recovery of land" within the meaning of the Act cited. "Recovery" may mean more than "recovery of possession." If it does, the greater includes the less.

[Independent Order of Foresters v. Pegg, 19 P. R. 80, distinguished.]

I therefore conclude upon the mere question of jurisdiction: (1) that the indorsement in the case in the District Court was an indorsement under Rule 138; and (2) that it was for "recovery of land" within the meaning of the Act giving jurisdiction to the District Court.

Sub-section 3 of sec. 9 of R. S. O. ch. 109 assists in determining the intention of the Legislature upon the question of jurisdiction. . . . It was evidently intended to open wide the door as to jurisdiction.

I ought not to continue the injunction upon the second ground. It is certainly contrary to the policy of the Courts as law is now administered to permit an action of ejectment and afterwards an action for sale. See *Hay v. McArthur*, 8 P. R. 321. This suit is not for foreclosure or sale. It is for a declaration as to plaintiffs' rights, and if I am right in deciding that the action in the District Court is only for recovery of land and is within the jurisdiction of that Court, I ought not to restrain further proceedings there, merely because the plaintiffs could have their complete recovery in the present action.

The mere question of immediate possession cannot, under the special and unfortunate circumstances now existing, matter much to either party. The plaintiffs are mortgagees in fact and must account for their dealings with the property if the defendants are able to redeem; and the defendants in the present action have the right to attack the mortgage if open to valid legal objections. If the defendants remain in possession, they so remain under injunction as to dealing with the property, and practically are caretakers for plaintiffs.

The injunction should be dissolved. Costs to be costs in the cause.