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[G.R. No. 911. March 12, 1903]

MAXIMO CORTES, PLAINTIFF AND APPELLANT, VS. JOSE PALANCA YU-TIBO, DEFENDANT AND APPELLEE.

D E C I S I O N

MAPA, J.:

This suit was brought to obtain an injunction, in accordance with the provisions of sections 162 to 172 of the Code of Civil Procedure, for the purpose of restraining the continuation of certain buildings commenced by the defendant. The court below issued a preliminary injunction during the trial, but, upon rendering final judgment, dissolved the injunction, with the costs against the plaintiff. The latter excepted to this judgment and assigns error.

In the trial the following facts were admitted without contradiction:

(1) That house No. 65 Calle Rosario, this city, property of the wife of the plaintiff, has certain windows therein, through which it receives light and air, said windows opening on the adjacent house, No. 63 of the same street; (2) that these windows have been in existence since the year 1843, and (3) that the defendant, the tenant of the said house No. 63, has commenced certain work with the view to raising the roof of the house in such a manner that one-half of one of the windows in said house No. 65 has been covered, thus depriving the building of a large part of the air and light formerly received through the window. In its decision the court below practically finds the preceding facts, and further finds that the plaintiff has not proven that he has, by any formal act, prohibited the owner of house No. 63 from making improvements of any kind therein at any time prior to the complaint.

The contention of the plaintiff is that by the constant ami uninterrupted use of the windows referred to above during a period of fifty-nine years he acquired by prescription an easement of light, in favor of the house No. 65, and as a. servitude upon house No. 63, and, consequently, has acquired the right to restrain the making of any improvements in the

latter house which might in any manner be prejudicial to the enjoyment of the said easement. He contends that the easement of light is positive; and that Iherefore the period of possession for the purposes of the acquisition of a prescriptive title is to begin from the date on which ihe enjoyment of the same commenced, or, in other words, applying the doctrine to this case, from the time that said windows were opened with the knowledge of the owner of the house No. 63, and without opposition on his part.

The defendant, on the contrary, contends that the easement is negative1, and that therefore the time for the prescriptive acquisition thereof must begin from the date on which the owner of the dominant estate may have prohibited, by a formal act, the owner of the servient estate from doing something which would be lawful but for the existence1 of the easement.
The court below in its decision held that the easement of light is negative, and this ruling has been assigned by the plaintiff as error to be corrected by this court.

A building may receive light in various manners in the enjoyment of an easement of light, because the openings through which the light penetrates may be made in one's own wall, in the wall of one's neighbor, or in a party wall. The legal doctrine applicable in either one of these cases is different, owing to the fact that, although anyone ir open windows in his own wall, no one has a right to so in the wall of another without the consent of the owe and it is also necessary, in accordance with article 580 the Civil Cod*1, to obtain the consent of the other coow: when the opening is to be made in a party wall.

This suit deals with the first case; that is, windows opened in a wall belonging to the wife of the plaintiff, and it is this phase of the easement which it is necessary to consider in this opinion.

When a person opens windows in his own building he does nothing more than exercise an act of ownership inherent in the right of property, which, under article 348 of the Civil Code, empowers him to deal with his property as he may see fit, with no limitations other than those established by law. By reason of the fact that such an act is performed wholly on a thing which is wholly the property of the one opening the window, it does not in itself establish any easement, because the property is used by its owner in the exercise of dominion, and not as the exercise of an easement: *"For a man,"* says law 13, title 31, third partida, "*should not use that which belongs to him as if it iccre a service only, but as his own property*" Coexistent with this right is the right of the owner of the adjacent property to cover up such windows by building on his own land or raising a Avail contiguously to the

wall in which the windows are opened (art. 581 of the same Code), by virtue of the reciprocity of rights which should exist between abutting owners, and which would cease to exist if one could do what he pleased on his property and the other could not do the same on his. Hence it is that the use of the windows opened in a wall on one's own property, in the absence of some covenant or express Agreement to the contrary, is regarded as an act of mere tolerance on the part of the owner of the abutting property (judgments of the supreme court of Spain of the 17th of May, 1876; 10th of May, 1884; 30th of May, 1890), and does not create any right to maintain the windows to the prejudice of the latter (judgment of the supreme court of Spain of the 13th of June, 1877). The mere toleration of such an act does not imply on the part of the abutting owner a waiver of his right to freely build upon his land as high as he may see fit, nor does it avail the owner of the windows for the effects of possession according to article 1942 of the Civil Code, because it is a mere possession at will. From all this it follows that the easement of light with respect to the openings made in one's own edifice does not consist precisely in the fact of opening them or using them, inasmuch as they may be covered up at any time by the owner of the abutting property, and, as Manresa says in his commentaries on the Civil Code, *"there is no true easement as long as the right to impede its use exists."* The easement really consists in prohibit ing or restraining the adjacent owner from doing anything which may tend to cut off or interrupt the light; in short, it is limited to the obligation of not impeding the light (*ne luminibus officatur*). The latter coincides in its effects, from this point of view, with the obligation of refraining from increasing the height of a building (*altius non tollendi*), which, although it constitutes a special easement, has for its object, at times, the prevention of any interruption of the light enjoyed by the adjacent owner.

It will be readily observed that the owner of. the servient estate subject to such an easement, is under no obligation whatsoever to allow anything to be done on his tenement, nor to do anything there himself, but is simply restrained from doing anything thereon which may tend to cut off the light from the dominant estate, which he would undoubtedly be entitled to do were it not for the existence of the easement. If, then, the first condition is that which is peculiar to positive easements., and the second condition? that which is peculiar to negative easements, according to the definition of article 533 of the Civil Code, it is our opinion that the easement of lights in the case of windows opened in one's own wall is of a negative character, and, as such, can not be acquired by prescription under article 538 of the Civil Code, except by counting the time of possession from the date on which the owner of the dominant estate may, by a formal act, have prohibited the owner of the servient estate from doing something which it would be lawful for him to do were it not for

the easement.

The supreme court of Spain, in its decisions upon this subject, has established these principles by a long line of cases. In its judgment of May 14, 1861, the said court holds that "the prescription of the easement of lights does not take place unless there has been some act of opposition on the part of the person attempting to acquire such a right against the person attempting to obstruct its enjoyment." "The easements of light and view," says the judgment of March 6, 1875, "because they are of a negative character, can not be acquired by a prescriptive title, even if continuous, or although they may have been used for more than twenty-eight years, if the indispensable requisite for prescription is absent, which is the prohibition, on the one part, and the consent on the other, of the freedom of the tenement which it is sought to charge with the easement." In its judgment of June 13, 1877, it is also held that use does not confer the right to maintain lateral openings or windows in one's own wall to the prejudice of the owner of the adjacent tenement, who, being entitled to make use of the soil and of the space above it, may, without restriction, build on his line or increase the height of existing buildings, unless he has been *"forbidden to increase the height of his buildings and to thus cut off the light,"* and such prohibition has been consented to and the. time fixed by law subsequently expired. The court also holds that it is error to give the mere existence or use of windows in a wall standing wholly on the land of one proprietor the creative force of a true easement, although *they may have existed from time immemorial.* Finally, the judgments of the 12th of November, 1889, and the 31st of May, 1890, hold that "as this supreme1 court has decided, openings made in walls standing wholly on the land of one proprietor and which overlook the land of another exist by mere tolerance in the absence of an agreement to the contrary, and can not be acquired by prescription, except by computing the time from the execution of some act of possession which tends to deprive the owner of the tenement affected of the right to build thereon." Various other judgments might be cited, but we consider that those above mentioned are sufficient to demonstrate the uniformity of the decisions upon this point. It is true that the supreme court of Spain, in its decisions of February 7 and May 5, 1896, has classified as positive easements of lights which were the object of the suits in which these decisions were rendered in cassation, and from these it might be believed at first glance that the former holdings of the supreme court upon this subject had been overruled. Hut this is not so, as a matter of fact, inasmuch as there is no conflict between these decisions and the former decisions above cited.

In the first of the suits referred to, the question turned upon two houses which had formerly belonged to the same owner, who established a service of light on one of them for the

benefit of the other. These properties were subsequently conveyed to two different persons, but at the time of the separation of the property nothing was said as to the discontinuance of the easement, nor were the windows which constituted the visible sign thereof removed. The new owner of the house subject to the easement endeavored to free it from the incumbrance, notwithstanding the fact that the easement had been in existence fov thirty-five years, and alleged that the owner of the dominant estate had not performed any act of opposition which might serve as a starting point for the acquisition of a prescriptive title. The supreme court, in deciding this case, on the 7th of February, 1896, held that the easement in this particular case was positive, because it con sisted in the *active* enjoyment of the light. This doctrine is doubtless based upon article 541. of the Code, which if of 1he. following tenor: "The existence of apparent sign of tin easement between two tenements, established bv tht. owner of both of them, shall be considered, should one hi sold, as a title for the active and passive continuance oi Ihe easement, unless, at the time of the division of the ownership of both tenements, the contrary should be ex pressed in the deed of conveyance of either of them, or sueli sign is taken away before the execution of such deed."

The word *"active"* used in the decision quoted in classify ing the particular enjoyment of light referred to therein^ presupposes on the part of the owner of the dominant estate1 a right to such enjoyment arising, in the particular case passed upon by that decision, from the voluntary art of the original owner of the two houses, by which he iniposed upon one of them an easement for the benefit of the other. It is well known that easements are established, among other cases, by the will of the owners. (Article 536 of the Code.) It was an act which was, in fact, respected and acquiesced in by the new owner of the servient estate, since he purchased it without making any stipulation against the easement existing thereon, but, on the contrary, acquiesced in the continuance1 of the apparent sign thereof. As is stated in the decision itself, illt is a principle of law that upon a division of a tenement among various persons—in the absence of any mention in the contract of a mode of enjoyment different from that to which the former owner was accustomed—such easements as may be necessary for the continuation of such enjoyment are understood to subsist." It will be seen, then, that the phrase "active enjoyment" involves an idea directly opposed to the enjoyment which is the result of a men? tolerance on the part of the adjacent owner, and which, as it is not based upon an absolute, enforceable right, may be considered as of a merely passive character. Therefore, the decision in question is not in conflict with the former rulings of the supreme court of Spain upon the subject, inasmuch as it deals with an easement of light established by the owner of the servient estate, and which continued in force after the estate was sold, in accordance vrith the special provisions of article 541 of

the Civil Code.

Nor is the other decision cited, of May 5, 1.890, in conflict with the doctrine above laid down, because i£ refers to windows opened in a *party wall*, and not in a wall the sole and exclusive property of the owner of the dominant tenement, as in the cases referred to by the other decisions, and as in the ease at bar. The reason for the difference of the doctrine in the one and the other case is that no part owner can, without the consent of the other, make in a party wall a window or opening of any kind, as provided by article 580 of the Civil Code. The very fact of making such openings in such a wall-might, therefore, be the basis for the acquisition of a prescriptive title without the necessity of any active opposition, because it always presupposes the express or implied consent of the other part owner of the Avail, which consent, in, turn, implies the voluntary waiver of the right of such part owner to oppose the making of such openings or windows in such a wall.

With respect to the provisions of law 15, title 31, third *partida*, which the appellant largely relied upon in his oral .argument before the court, far from being contrary to it, is entirely in accord with the doctrine of the decisions above referred to. This law provides that "if anyone shall open a window in the wall of his neighbor, through which the light enters his house," by this sole fact he shall acquire a prescriptive? title to the easement of light, if the time fixed in the same law (ten years as to those in the country and twenty years as to absentees) expires without opposition on the part of the owner of the wall; but, with the exception of this case, that is to say, Avhen the windows are not opened in the wall of the *neighbor* the law referred to requires as a condition to the commencement of the running of the time for the prescriptive acquisition of the easement, that "the neighbor be prohibited from raising his house, and from thereby interrupting the light." That is to say, he must be prohibited from exercising his right to build upon his land, and cover the window of the other. This prohibition, if consented to, serves as a starting point for the prescriptive acquisition of the easement. It is also an indispensable requisite, therefore, in accordance with the law of the partidas, above mentioned, that some act of opposition be performed, in order that an easement may be acquired with respect to openings made in one's own wall.

For a proper understanding of this doctrine, it is well to hold in mind that the Code of the *partidas*, as well as the Roman law, clearly distinguishes two classes of easements with respect to the lights of houses, as may be seen in law 2 of title 31, of the third *partida*. One of them consists in "the right to pierce the wall of one's neighbor to open a window through which the light may enter one's house" (equivalent to the so-called easement of *luminum* of the Romans); the other is "the easement which one house enjoys over another, whereby the

latter can not at any time be raised to a greater height than it had at the time the easement was established, to the end that the light be not interrupted." (*Ne luminibus officiatur*.) For the prescriptive acquisition of the former the time must begin, as we have seen, from the opening of the window in the neighbor's wall. As to the second, the time commences from the date on which he was "prevented from raising his house." Some of the judgments which establish the doctrine above laid down were rendered by the supreme court of Spain interpreting and applying the above-cited law 15, title 31, *partida* 3, and therefore they can not in any sense be regarded as antagonistic to the law itself. The question as to whether the windows of the house of the plaintiff are, or are not, so-called regulation windows, we consider of but little importance in this case, both because the authority of the decisions of the law of the *partidas*, above cited, refers to all kinds of windows, and not to regulation windows solely, and because the record does not disclose, nor has the appellant even stated, the requirements as to such regulation windows under the law in operation prior to the Civil Code, which he asserts should be applied and on which he relies to demonstrate that he has acquired by prescription the easement in question. With respect to the watershed which, according to the plaintiff, exists over the window in question, the record does not disclose that the same has been destroyed by the defendant. He expressly denies it on page 7 of his brief, and affirms (p. 8) that the tenant of the appellant's property himself removed it, by reason of the notice served on him; on the other hand, the judgment of the court below contains no findings with respect to this fact, nor does it disclose the former existence of any such watershed. Furthermore, the opinion which we have formed with respect to this matter, in so far as we are able to understand the merits of the case, is that this shed was a mere accessory of the window, apparently having no other purpose than that of protecting it against the inclemency of the weather; this being so, we are of opinion that it should follow the condition of the window itself, in accordance with the legal maxim that the accessory always follows the principal. The appellant contends that the shed should be regarded as a projection within the provisions of article 582 of the Code; but it is sufficient to observe that this article speaks of windows with direct views, balconies, or similar projections, in order to conclude that the article does not refer to such watersheds, which have not the slightest degree of similarity to balconies, nor are they constructed for the purpose of obtaining the view—this being the subject-matter which this article expressly purports to control—inasmuch as such sheds have rather the effect of limiting the scope of the view than of increasing it.

The fact that the defendant did not cover the windows of the other house adjacent to No. G3 at the time he covered the windows of the appellant, a fact which the latter adduces as

proof of the recognition on the part of the former of the prescriptive acquisition of the easement of the light in favor of that house, which, according to his statement, is under precisely the same conditions as the house of the plaintiff, does not necessarily imply, in our opinion, any such recognition, as it might be the result of a mere tolerance on the part of the defendant. Certainly the fact of his tolerating the use by the owner of that house of such windows, supposing the facts to be as stated, does not carry with it as a result an obligation to exercise the same forbearance with respect to the plaintiff; but whatever may he the legal status of the windows in the house referred to with respect to the house No. 03, we can not pass upon the point, nor can we form suppositions concerning the matter for the purpose of drawing conclusions of any kind therefrom to support our opinion, for the simple reason that it is not a point at issue in this case, and more especially because the defendant not only denied the existence of the alleged easement of light in favor of the house referred to, but, on the contrary, he affirms that demand has been made that the windows in said house be closed, as may be seen on page 8 of his brief.

The point discussed in this trial being whether the plaintiff has acquired the easement which he seeks to enforce over the house of which the defendant is tenant, it is evident that the provisions of article 585 of the Civil Code can not be invoked without taking for granted the very point at issue. This article refers to cases in which, under any title, the right has been acquired to have direct views, balconies, or belvederes over contiguous property. The existence of such a right being the very point at issue, the supposition upon which the article rests is lacking,

and it is therefore nor. in point.

As a result of the opinion above expressed, we hold :
1. That the easement of light which is the object of this litigation is of a negative character, and therefore pertains to the class which can not be acquired by prescription as provided by article 538 of the Civil Code, except by counting the time of possession from the date on which the owner of the dominant estate has, in a formal manner, forbidden the owner of the servient estate to do an act which would be lawful were it not for the easement.

2. That, in consequence thereof, the plaintiff, not having executed any formal act of opposition to the right of the owner of house No. 63 Calle Rosario (of which the defendant is tenant), to make therein improvements which might obstruct the light of house No. G5 of the same street, the property of the wife of the appellant, at any time prior to the complaint, as found by the court below in the judgment assigned as error, he has not acquired, nor

could he acquire by prescription, such easement of light, no matter how long a time might have elapsed since the windows were opened in the wall of the said house No. 65, because the period which the law demands for such prescriptive acquisition could not have commenced to run, the act with which it must necessarily commence not having been performed.

Therefore, we affirm the judgment of the court below and condemn the appellant to the payment of all damages caused to the plaintiff, and to the payment of the costs of this appeal. So ordered.

Arellano, C. J., Cooper, Willard, and *Ladd, JJ.,* concur.

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

ON MOTION FOR A REHEARING.

The plaintiff asks for a rehearing of the decision of the court of March 12th last upon the ground that the same concontains error:

First, because the decision holds that the window opened in the plaintiff's own wall and the watershed do not constitute the continuous and apparent easements of prospect, light, and ventilation, or *jus projitiendi* and *jus spillitiendi,* this ruling being in opposition to the provisions of laws 12, 14, and 15, title 31, third *partida*, and articles 530, 532, 533, 537, 538, 582, and 585 of the Civil Code.

This allegation is entirely unfounded, inasmuch as the decision of the court contains no declaration as to whether the windows and watershed do or do not constitute continuous and apparent easements, or *jus projitiendi* and *jus spillitiendi*,. These questions were not drawn into issue by the complaint, and therefore any decision thereon one way or the other would have been mere dicta. What the court did hold was that the easement of light, when it is sought to claim such benefit from a window opened in one's own wall, as does the appellant with respect to the tenement of the defendant, belongs to the class.of negative easements, and that on that account the time of possession for prescriptive acquisition of the title thereto must be counted, not from the time of the opening of the windows, but from the time at which the owner thereof has executed some act of opposition tending to deprive the owner of the servient tenement of his right, under the law, to build upon it to such

height as he might see fit in the legitimate use of his rights of ownership. With respect to the watershed, the court held that the shed in question in the case is not included within the class of projections referred to in article 582 of the Civil Code, and certain it is that neither this article nor any of the other provisions of law cited by the appellant in his motion papers establish any doctrine contrary to that laid down in the decision, either with regard to the watershed or with respect to the windows. It is not necessary to say anything further upon this point. It is sufficient to read the text of the laws cited to reach the conclusion that the assertion made by the appellant in his motion papers is entirely gratuitous.

Article 582 provides that windows with direct views, balconies, or other similar projections opening upon the tenement of one's neighbor are not permissible unless there are two meters distance between the wall in which such openings are constructed and the adjacent tenement. From this the appellant draws the conclusion that he who opens windows in his own wall without respecting the distance mentioned does not exercise an act of ownership, as stated in the decision, inasmuch as he violates an express provision of the law.

The conclusion reached is evidently false. The appellant confounds the facts with the law—an act of ownership with the right of ownership. The owner of a thing does not cease to be such owner because in his manner of use or enjoyment thereof he violates some provision of law. The acts which he performs, in our opinion, even if abusive or contrary to law, are in a strict sense acts of ownership, acts in the exercise of dominion, because this character is not derived from a greater or less degree of compliance with the provisions of law, but from the existence of the status of owner on the part of the person who exercises such acts. In order that the act performed by the owner of a wall in opening windows therein be a true act of ownership it is a matter of indifference whether or not the distance prescribed by article 582 of the Code has been respected, although, considered from a legal point of view, it might be an illegal act, as not complying with the conditions imposed by law.

The doctrine laid down by law 13, title 31, *partida* 3, cited in the decision, to the effect that "a man should not use that which belongs to him as if it were a service only, but as his own property" is of general application, and does not' refer to the easements which a property owner may establish for the benefit of his heirs, as is erroneously believed by the appellant. The very same law provides that easements which "a man imposes upon his house must be for the benefit of the tenement or thing of another, and not that of his own tenement;" and this is because tilings are of service to their owner by reason of dominion, and not in the exercise of a right of easement, *"Res sua"* says a legal maxim, "*nemini jure servitutis servit*."

The provision of article 1942 of the Civil Code to the effect that acts which are merely tolerated produce no effect with respect to possession is applicable as much to the prescription of real rights as to the prescription of the fee, it being a glaring and self-evident error to affirm the contrary, as does the appellant in his motion papers. Possession is the fundamental basis of the prescription. Without it no kind of prescription is possible, not even the extraordinary. Consequently, if acts of mere tolerance produce no effect with respect to possession, as that article provides, in conformity with article 444 of the same Code, it is evident that they can produce no effect with respect to prescription, whether ordinary or extraordinary. This is true whether the prescriptive acquisition be of a fee or of real rights, for the same reason holds in one and the other case; that is, that there has been no true possession in the legal sense of the word. Hence, it is because the use of windows in one's own wall is the result of a mere tolerance that the supreme court of Spain, in its judgment of Juno 13, 1877, has held that such user lacks the creative force of a true easement, although continued *from time immemorial*. The citation of article 1959 of the Civil Code and of law 21, title 29, *partida* 3, made by the petitioner, is therefore not in point, because both of these provisions of law, which refer to the extraordinary period of prescription, presuppose possession as a necessary requisite, even if without either just title or good faith.

The second error assigned is that in the decision the court holds that the *gravamina* constituted by the window and the projection are negative easements, against the provisions of article 533, which define them as positive, which definition, he adds, is supported by the judgments of the supreme court of Spain of February 7 and May 5, 189G, cited in paragraph 12 of the said decision, which judgments declare that the easement resulting from a window is positive.

It is not true that article 533 of the Civil Code says that the easement of light is positive, because it does nothing more than give in general terms the definition of positive easements and negative easements, without attempting to specify whether the easement of lights pertains to the first or to the second class. We have declared that the easement is negative, having in mind this very definition of the Code and the doctrine established by the judgments of the supreme court of Spain which have been cited in our opinion. The interpretation which the appellant attempts to give the article of the Civil Code cited is evidently erroneous, and, consequently, the citation made by him in support of his contention is not in point.

Our opinion of the true extent and meaning of the judgments of the supreme court of Spain of February 7 and May 5, 1896, has been already sufficiently explained, and it is therefore

unnecessary to go into the subject again here. We refer to our decision with respect to what was said therein upon this subject.

The decision of the court does not contain the declara tion, as gratuitously assumed by the appellant, that the easement resulting from a projection is of a negative character; nor, in fact, had we any occasion to make such a declaration, in view of the nature of the issues raised and discussed during the trial. What we did, indeed, hold was that the *watershed* mentioned in the complaint, the purpose of which was simply to protect the window in question from sun and rain, was a mere accessory to that window, and that in no case could it be considered as a projection within the provisions of article 582 of the Civil Code, as so erroneously contended by the appellant at the trial. We find nothing in his motion papers which can in any way weaken this holding.

The third error assigned is that the court holds that the easement of light, as negative, can not be acquired by prescription except by counting the period of possession from the time at which the owner of the servient tenement has been prohibited from making improvements which might interfere with said easement, contrary to the provisions of law 14, title 31, *partida* 3, and articles 538 and 585 of the Civil Code, which establish the contrary.

This assertion is entirely destitute of foundation, inasmuch as neither in the law of the *partidas* nor in the articles of the Civil Code mentioned is to be found the doctrine which the appellant arbitrarily seeks to deduce from them. It is sufficient to read the text to reach the conclusion that the assertion is wholly gratuitous.

The fourth error assigned is that the court holds that the watershed, as being an accessory of the window, can not in itself constitute an easement, this being contrary to the provisions of articles 582 and 585 of the Civil Code, and law 2, title 31, *partida* 3, which do not make any such distinction.

Neither of the laws cited speaks expressly of watersheds. We have held that article 582 refers solely to windows, balconies, and other *similar*projections, and that the watershed in question does not pertain to this class of projections, our holding being based upon the reasons given in our decision. The appellant advances no argument worthy of serious consideration, and therefore we continue to believe that our opinion in this matter is strictly in accordance with the law.

The appellant has attached to his motion for a rehearing two judgments, one rendered by the Royal Audiencia of Manila September 6, 1877, and the other by the supreme court of

Spain on the 22d of February, 1892, and we think it well to say a few words concerning them.

In the opinion of the appellant these judgments support the theory contended for by him at the trial, that the easement of lights is positive and not negative. His error in so believing is evident, inasmuch as neither of the judgments referred to establishes any such doctrine. On the contrary, it appears clear, from the first of these judgments, that the easement referred to is negative in the opinion of the court which rendered it. This appears from the eighth conclusion of law therein, which is literally as follows: "From the evidence introduced by the defendant, and even from the testimony of witnesses of the plaintiff, it has been proven that since 1828 the house in question has suffered no change or alteration in its roof, which projects aver Cosio's lot, *which constitutes the active opposition necessary in order to acquire by prescription the right to the light*" It will be seen, then, that the latter part of the preceding transcript of the conclusion of law lays down precisely the same doctrine as that expressed in our decision—that active opposition is a necessary condition for prescriptive acquisition of an easement of light. And this also demonstrates conclusively that the court which rendered the judgment referred to considered the easement to be negative, inasmuch as positive easements do not require any active opposition as a basis for their prescriptive acquisition, such an act being solely necessary to the prescription of negative easements.

It would appear, judging from his allegations as a whole, that the appellant confuses positive easements with continuous easements, and the judgment referred to, in fact, declares in its fourth conclusion of law that the easement of light is continuous. If this were really so the error of the appellant would be manifest, because continuity is not a quality exclusively peculiar to positive easements; there are negative easements which are also continuous. Hence it is that the Civil Code, after classifying easements, in article 532, as continuous and discontinuous, classifies them also as positive and negative (art. 533), thus giving to understand that this latter classification depends upon other characteristics entirely distinct from the continuity or discontinuity of easements. If all continuous easements were positive and all discontinuous easements were negative, then the express division of easements into positive and negative made by the Code, after establishing the division of the same as continuous or discontinuous, would be entirely unnecessary, as they would be entirely merged or included in the latter classification. It is sufficient to read the text of the Code to understand beyond the possibility of a doubt that a negative easement may be continuous, and that a positive easement may be discontinuous, according to the special nature of each one.

With respect to the second judgment—the judgment of the supreme court of Spain of February 22, 1892—it is certainly difficult to understand how the appellant could have imagined that he had found therein the slightest ground for his contention, inasmuch as it lays down no doctrine which relates even by inference to the subject of casements, and simply holds, in the first of only two paragraphs in which its conclusions are contained, that "judgments should be clear, precise, and responsive to Ihe complaint and the issues properly raised at the trial;" and in the second, that "the judgment appealed was contradictory as to the questions it decides, because it makes curtain declarations favorable to some of the contentions in the plaintiff's complaint and then gives judgment for the defendant, without making any distinction." It was for this reason alone, and for no other, that the judgment appealed was reversed and annulled. In the judgment rendered by the same supremo court upon the merits of the case, as a result of this decision in cassation, no other doctrine is laid down than that "the judgment must be that the defendant comply with those claims advanced by the complaint to which he has consented, and that he must be discharged as to those allegations which have been denied by him and which have not been proved by the plaintiff."

There is not one word in these judgments which says that the easement of lights is positive, nor that a watershed constitutes a true projection within the meaning attached to this word in article 582 of the Civil Code, as has been vainly contended by the appellant in the trial. Therefore the appellant's motion for a rehearing of the decision of March 12,1903, is denied.

Arellano, C. J., Cooper, Willard, and *Ladd, JJ.,* concur.

Torres and *McDonough, JJ.,* did not sit in this case.

ON MOTION FOR WRIT OF ERROR TO REMOVE THE CASE TO THE SUPREME COURT OF THE UNITED STATES.

WILLARD, J.:

The application to this court for the allowance of a writ of error or appeal for the purpose of removing this case to the Supreme Court of the United States is denied.

Section 10 of the act of Congress of July 1, 1902, is as follows:

> "SEC. 10. That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby in which the Constitution or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court of the United States on appeal or writ of error by the party aggrieved, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the circuit courts of the United States."

There is no question in the case relating to the Constitution or any statute of the United States. The evidence submitted by the applicant shows that the value of his property over which this litigation turns is $11,867.70, money of the United States.

The fact that the plaintiff owns other houses in different parts of the city as to which he claims an easement of light similar to the one claimed in this case, that the decision in this case destroys all of these claimed easements, and that the value of those other houses exceeds f 25,000, gold, is not important. The test is the value of the matter in controversy. The matter in controversy here was the easement of light and air over the property 'No. 63 Calle del Rosario and in favor of house No. 65. That easement could not be worth more than the house itself.

The easements in favor of other houses of the plaintiff over other lots than No. 63 were not in controversy in this suit (Town of Elgin vs. Marshall, 106 U. S., 578.) So ordered.

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

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

Date created: April 14, 2014