

5 Phil. 688

[G.R. No. 2500. March 08, 1906]

**MARIA DE LA CONCEPCION MARTINEZ CAÑAS, PLAINTIFF AND APPELLEE, VS.
MARIANO TUASON ET AL., DEFENDANTS AND APPELLANTS.**

D E C I S I O N

WILLARD, J.:

Maria de la Concepcion Martinez Cairns filed a petition in the Court of Land Registration asking that she be registered as the owner of the hacienda of Payatas, situated in the Province of Rizal. Mariano Tuason and others, the owners of the hacienda of Mariquina, appeared in the Court of Land Registration, and objected to the inscription asked for on the ground that they were the owners of a part of the land included in the petition. The objection of Tuason and others was overruled, and judgment was entered in favor of the petitioner as prayed for in her petition. Tuason and others excepted to the judgment and moved for a new trial on the ground that the decision was not justified by the evidence. This motion was denied, to which denial they excepted, and they have brought the case here by bill of exceptions.

The San Mateo River separates the hacienda of Payatas from the hacienda of Mariquina, and the controversy relates to a tract of land about 30 hectares in extent, which appellants claim formerly belonged to the hacienda of Mariquina, but which, by the action of the river, had been carried to the hacienda of Payatas. In 1894 or 1895 the appellants took possession of the land in question, which was then on the west, or Payatas side of the river. For the purpose of settling the conflicting claims of the parties to this tract of land, they on the 19th day of June, 1896, made a contract by the terms of which they agreed that each one of the respective parties should appoint a civil engineer as an expert; that the two engineers after an examination of the land and of such evidence as might be presented to them, should make a report in which they should set forth the causes which had occasioned the changes in the course of the San Mateo River and also the principles of law which were applicable to

the case. It was provided, further, that this report should be submitted to a member of the bar in Manila, who, as judge, should decide to whom the lands which had been gained by the respective owners by reason of the alterations in the course of the river, belonged. Each one of the parties, in accordance with this agreement, appointed a civil engineer. They met, examined the ground, heard the evidence of witnesses, and not agreeing as to the manner in which the changes in the course of the river had been effected, filed separate reports. The expert appointed by the owner of the hacienda of Payatas was of the opinion that the change had been gradual, and that the land in question belonged to the owner of that estate. The expert appointed by the owners of the hacienda of Mariquina thought that the change in the course of the river had been sudden or abrupt, and that the land in question belonged to the owners of the Mariquina estate. This report, together with the testimony of the witnesses presented before the engineers, was submitted to the arbitrator in 1897, but by reason of the disturbed condition of the country at that time he never made any report thereon. In this case the parties agreed in the Court of Land Registration that the case should be decided with reference to the facts agreed upon, and documents which were submitted to the arbitrator, and that the same effect should be given to the reports of the experts and to the testimony of the witnesses who appeared before the experts, as if they had testified in the Court of Land Registration. It was also admitted that since the time when the owners of the hacienda of Mariquina had taken possession of the property in question the extent thereof had been increasing, and that the river had eaten away and was still eating away the opposite bank, belonging to the hacienda of Mariquina. The parties agree that the law applicable to the case is that which now appears in articles 366, 368, and 374 of the Civil Code. These articles are as follows:

“ART. 366. The accretions which banks of rivers may gradually receive from the effects of the currents belong to the owners of the estates bordering thereon.

“ART. 368. When the current of a river, creek, or torrent detaches from an estate fronting thereon a known portion of land and transfers it to another estate, the owner of the estate to which the detached part belonged retains the Ownership thereof.

“ART. 374. When the current of a river divides itself into branches, leaving an estate or part thereof isolated the owner of the same retains his ownership. He also retains it if a portion of the land is separated from the estate by the current.”

If article 366 is applicable the judgment should be affirmed. If article 368 or 374 is applicable, the judgment should be reversed.

The area of the land claimed by Mariquina, which is now on the Payatas side of the river, is about 30 hectares. At what time this tract of land was on the other side of the river, does not clearly appear. The first map of the hacienda, made in 1746, and the one made in 1845, have been lost. There is no evidence to show when the land was carried over to the Payatas side; there is no evidence that it was done at any particular time; there is no evidence of any sudden change in the course of the river by which it left its former bed and made a new one, nor is there any indication on the ground of any abandoned bed. The only evidence in the case to show that this tract of land of 30 hectares had been separated by the current and transported to the other side of the river is the testimony of some of the witnesses examined before the engineers in 1896. The witnesses for Mariquina then testified that they remembered that about thirty years before the river had run upon the west side of the tract of land in question. The witnesses for Payatas, with one exception, all testified to the contrary.

As to the manner in which the land had been separated from the Mariquina estate, one witness for that estate testified that the river ate away the bank piece by piece, some of the pieces being of the size of 2 or 3 *balitas*. Three *balitas* are about equal to 1 hectare. Two other witnesses testified that the river changed its course 4 yards every year; another witness testified that he did not remember how the change took place, three other witnesses testified that the river took away every year large pieces from the Mariquina shore, of 4 or 6 yards in width; another witness limited the size of the pieces to 2 or 4 yards. The only witness who testified to a sudden change of the bed of the river was Pedro Trinidad, but he could not point out the former bed. Two other witnesses testified that the river took away the east bank to the width of 10 yards, and in pieces of the superficial area of a *balita*, but made no islands, another witness limited the size of the pieces to 6 yards. No one of these witnesses declared how frequently during the year these pieces were separated. No witness declared that any of the pieces so separated had been carried to the other side of the river. This fact alone shows that the testimony of the witnesses is not sufficient to bring the case under article 368. Although a piece of land of the size of a hectare may have been separated from Mariquina, yet if it were destroyed by the river and were not carried to Payatas, article 368 would not apply. We are inclined to think that what the witnesses observed was, as testified by one or two of them, that the bank was eaten away every year to a certain extent by the river—that is, that the river, to use the word employed by the counsel for the appellants in their brief, destroyed the bank of the river. From the evidence in the case it is

impossible to say that the current of this river has separated from the Mariquina estate a known parcel of land and has transported it to the Payatas side. The mere fact that thirty years ago the land now in question was on the Mariquina side of the river is not sufficient to prove that article 368 is applicable.

It is to be observed that the engineer appointed by the Mariquina estate placed no reliance upon the testimony of these witnesses. He based his opinion upon what he called a scientific demonstration of the fact that the change of the river must have been sudden and not gradual, and this is the basis of the first three items of proof mentioned in the brief of the appellant in this case.

In this same case in the court below the pueblo of San Mateo objected to the inscription of the land, claiming that four parcels of land which are now upon the San Mateo side of the river, and which were claimed by the petitioner, belonged, not to the petitioner, but to San Mateo. The court below decided this claim in favor of the petitioner, basing it upon the ground that the evidence upon that part of the case showed that the land had been transferred from the Payatas side of the river to the San Mateo side by a sudden change in 1888. The appellant in this case insists that the decision of the court below is inconsistent, in that it holds that in the case of San Mateo the change of the river was sudden, while in the case of the hacienda of Mariquina it was gradual. When the proofs in each case are examined, however, no such inconsistency is apparent. The evidence in the case of San Mateo, presented by San Mateo itself, showed that the river in 1888 changed its course, and that the old bed of the river was still visible. No such evidence was presented in this part of the case.

The judgment of the court below, so far as it relates to the opposition of Tuason et al. is affirmed, with the costs of this instance against the appellants. After the expiration of twenty days judgment shall be entered in accordance herewith and the case remanded to the lower court for execution. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.
