6 Phil. 3

[G.R. No. 2575. March 17, 1906]

MARIA DE LA CONCEPOION MARTINEZ CAÑAS, PLAINTIFF AND APPELLEE, VS. THE MUNICIPALITY OF SAN MATEO, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The bill of exceptions before us was presented in the same case in the Court of Land Registration, in which was presented the bill of exceptions in the case of Maria de la Concepcion Martinez Cañas *vs*. Mariano Tuason et al.,[1] (4 Off. Gaz., 309), just decided. The municipality of San Mateo opposed the petition in the court below on the ground that four certain parcels of land claimed by the petitioner to belong to herein fact belonged to the municipality of San Mateo. Upon this point the court below made the following finding of fact:

> "1. The evidence conclusively shows that prior to or about the year 1888 the lands now claimed by the municipality of San Mateo and covered, according to the map, by the sitio of kupang Cabeza and parcels marked with letters B, C, and D, formed an integral part of the Payatas estate on the north or west side of the San Mateo River, that is to say, on the bank, of the river opposite the one on which the town of San Mateo is located; that in the year 1888 and subsequent years owing to sudden and marked changes in the course of the San Mateo River, the parcels of land herein referred to were separated from the main part of the Payatas estate and are now on the southern or eastern side of the river, where the town of San Mateo is located."

This finding is sustained by the evidence of the witnesses which the appellant itself presented; in fact, there is no evidence to the contrary.

The provisions of the law found in article 368 of the Civil Code, and existing in the legislation prior thereto, require a determination that these four tracts of land thus separated from the hacienda of Payatas in 1888, still belong to the petitioner.

The appellant, however, claims that the provisions of that section are controlled by two documents which it presented in evidence. One of these is a document executed on the 30th day of March, 1746, made by "Don Pedro Calderon Enriquez, del Consejo de S. M. su Oidor de la Real Audiencia de estas islas y Juez privativo de tierras en todo el distrito de ellas." This document recites that Pedro Calderon Enriquez had examined the record formed in connection with the allotment of the public lands which the pueblo of San Mateo formerly possessed, and which it had lost by reason of its rebellion. It recites the destruction of the pueblo and its abandonment, and states that the people had been pardoned for the rebellion and had returned to the pueblo, and it was expedient that the land be assigned to them. It then declares that in the allotment of lands there should be observed the following rules and conditions:

> "It is hereby declared that all of the land between the Nanca River and Balete as divided by the former, which is the boundary of the Mariquina estate owned by the College of San Ignacio, of the Sagrada Compafiia de Jestis, of this city, where the college has a dam for the irrigation of the hacienda by means of an underground canal which runs beyond the slopes, said dam consisting of a palisade along the bed of the great River of San Mateo up to the mountains, be allotted to the said town of San Mateo, in such a manner that from the cave from which the great River of San Mateo springs, it shall always be the fixed boundary between the lands of San Mateo and the lands on the other side of the river; and in order that there may never be any controversy regarding, any glands which may be formed by land separated from one bank of the river and carried over to the other, it is declared that the bed in which the river may run in the month of March of each year, the dry season, shall always be the fixed boundary between the abutting estates, and such islands or land shall belong to the estate on the side of the river on which they may be formed, and the same rule shall apply to the Nanca River, provided always that the changes are due to natural causes. If caused by the action of either party or by a dam erected by either party he shall not thereby gain any portion of the land, nor will such changes be permitted. These two rivers of San Mateo and Nanca shall constitute the fixed boundary of the said town without the limits of which no person, community, or pious

> institution now holds any portion, large or small, of the land. That all of the land shall always be the common property of the town."

The lands referred to as on the other side of the river are now the hacienda of Payatas, the property of the petitioner. It is claimed by the appellee that Pedro Calderon Enriquez had no authority to declare that the San Mateo River, wherever it should How, should be the boundary between the lands of San Mateo and the property on the other side of river; that this was an attempt on his part to change the general laws then in force relating to the matter. The only provision of law which the appellant has called to our attention, and which he claims conferred any such authority upon Pedro Calderon Enriquez, is law 9, title 31, book 2 of the "Recopilatitm de las Leyes da Indias." That law is as follows:

> "The examiner shall see that whenever possible, the natives acquire part of the common land, and plant thereon trees grown on this and that territory, in order that they may not become slothful but will apply themselves to work, for their own welfare and benefit and the audiencia will give the examiner instructions in regard to such matters as it may deem expedient and worthy of consideration, although not provided for in the laws of this title, and will instruct him specially as to all things contained in this law."

What instructions, if any, were given by the Audiencia to this particular justice when he made the visitation in question, does not appear. The laws relating to the right of property in portions of land separated by the current of a river from one bank and carried to the other, were substantially the same in 1746 as they are now. They were general laws which governed the rights of parties as between themselves, and like other general laws, we do not think they were subject to change at the will of an official to whom was designated the duty of making an allotment of public lands. In our opinion Pedro Calderon Enriquez had no more authority to make this change in the general law of waters than he had to make a change in the general law of descent as to the property which was to be allotted.

The appellant also presented another document dated on the 6th day of December, 1873, which recites that in proceedings had for the purpose of making a survey of that part of the hacienda of Payatas, which is here in question, the *principales* of the pueblo of San Mateo and those of the pueblo of Montalban, and Jos6 Martinez Cañas, the grantor of the petitioner, met the engineer charged with the survey in the municipal building of

Montalban; that the surveyor then asked the representatives of the pueblo of San Mateo if they agreed that the boundary line between their lands and the hacienda of Payatas should be the San Mateo River as a fixed and invariable boundary, and they declared that they so agreed; and the same question was asked the representatives of Montalban, and they made the same answer. The question asked Jose" Martinez Gaffes was as follows:

> "Cañas having been asked as to whether he agreed that the boundary of his hacienda de Payatas on the Payatas side should commence at Nanca, thence following the course of the great River of San Mateo down to certain rocks shaped like diamond's points, which rocks are mentioned in the document presented by him, Cañas answered in the affirmative and remarked that the rocks were not called '*punta diamante*' (diamond point) but had the shape of it."

It is claimed by the appellant that this was an agreement on the part of the then owner of the estate .that the boundary between his estate and the pueblo of San Mateo should be the channel of the river, wherever it might flow. It is difficult to know whether the representatives of San Mateo and Montalban intended to agree that the boundary should be the then course of the river, which should be fixed and invariable, no matter what changes the river might afterwards suffer, or whether they meant that the boundary should be the river wherever it might flow, which would make the boundary not fixed and invariable, but variable. If the intention was to make the boundary the then course of the river in 1873, this agreement favors the appellee rather than the appellant, because, according to the boundary in 1873, these four parcels of land here in question were on the Payatas side of the river.

But even if this construction is not correct, we do not see how the agreement made by the representatives of San Mateo and of Montalban can bind the present owner of the estate of Payatas, because her grantor made no agreement as to the permanency of the boundary. It will be noticed that in the question asked him the words "fixed and invariable" were omitted. According to the contention of the appellant these words determine whether these four tracts of land belong to San Mateo or belong to the petitioner. They were therefore vitally important. If Jose Martine? Cañas agreed that the river should be the boundary, then the petitioner is entitled to recover in this case, for that would be no more than an agreement that the general law relating to changes in the river should apply. If, on the other hand, he agreed that the river should be the boundary, wherever it might run, then there

would exist some basis for the claim of the appellants. For the purpose of determining what he did agree to, the exclusive evidence is the document in question, and we know of no rule of law that enables us to add anything to its words. The fact that the pueblos of Montalban and San Mateo may have agreed upon a certain boundary is not sufficient to show that Jose Martinez Cañas agreed upon the same kind of a boundary, especially when the document in question shows that he agreed upon an entirely different one.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days judgment shall be entered in accordance herewith and the case remanded to the lower court for proper procedure. So ordered.

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

CONCURRING

CARSON, J.:

I assent. I think however, that a fair construction of the document mentioned in the last paragraph of the majority opinion would bind Jose Martinez Cañas to the same terms and conditions as to the boundary line in question as it imposes upon the pueblos of Montalban and San Mateo, and that the intention of all the parties to the agreement was to make the course of the river, as it ran in 1873, the fixed and invariable boundary line. The evident intention of the parties was to bring an end to the unsatisfactory conditions resulting from the unauthorized regulation which was put in force in 1746 by Pedro Calderon Enriquez, and which made the boundary line vary each year to follow the current of the river as it happened to flow in the month of March.

This interpretation of the agreement of 1873 leads to the same result as that arrived at in the majority opinion, because the four parcels of land in question were on the Payatas side of the river at that date.

It may not he improper to add that this view of the force and effect of that agreement does not necessarily imply that the provisions of the general law of waters are not applicable to these lands, for it might well be contended that the limiting words “fixed and invariable” were used simply to take them from under the unauthorized regulation of 1746, and were

not intended to take them from under the provisions of general law. This, however, is of no importance for the purpose of this decision, because as shown in the majority opinion, if it be held that the general law of waters is applicable, the decision should still be in favor of the appellee.

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[1] 5 Phil. Rep., 688.

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