

[WITH RESOLUTION OF JANUARY 20, 1961]*G.R. No. L-14116. June 30, 1960*

Ponente: BARRERA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/e9406513f462/>**BARRERA, J.:**

The legal issue presented in this petition to review by certiorari a decision of the Court of Appeals, is whether the respondents Irene P. Javier, et al., owners of a building standing on their lot with windows overlooking the adjacent lot, had acquired by prescription an enforceable easement of light and view arising from a verbal prohibition to obstruct such view and light, alleged to have been made upon petitioner's predecessor-in-interest as owner of the adjoining lot, both of which lots being covered by Torrens titles. Both the trial court and the Court of Appeals are of the view and so declared that respondents Javier et al., did acquire such easement and gave judgment accordingly. Hence, petitioner has come to us seeking review, alleging that both courts are in error.

The windows in question are admittedly in respondents' own building erected on their own lot. The easement, if there is any, is therefore a negative one.[1] The alleged prohibition having been avowedly made in 1913 or 1914, before the present Civil Code took effect, the applicable legal provision is Article 538 of the Spanish Civil Code which provides:

"ART. 538. In order to acquire by prescription the easements referred to in the next preceding article, the time of the possession shall be computed, * * * in negative easements, from the day on which the owner of the dominant estate has, by a formal act, forbidden the owner of the servient estate to perform any act which would be lawful without the easement." (Emphasis supplied.)

As may be seen, the only question hinges on the interpretation of the phrase "a formal act". The lower court and the Court of Appeals considered any prohibition made by the owner of the dominant estate, be it oral or written, sufficient compliance with the law. The Court of Appeals declared:

"In the light of the foregoing decisions, (Cortes vs. Yu Tibo, 2 Phil., 26 and the decisions of the Supreme Court of Spain therein cited), we agree with the trial court that the 'formal act' of prohibition contemplated by Art. 538 of the old Civil Code may be either a written or verbal act. The decisions of the Supreme Court of Spain above-quoted do not at all mention written but merely some act of prohibition. * * *."

We are inclined to take the contrary view. The law is explicit. It requires not any form of prohibition, but exacts, in a parenthetical expression, for emphasis, the doing not only of a specific, particular act, but a formal act. The following definitions are pertinent:

"Formal—or pertaining to form, characterized by one due form or order, done in due form or with a solemnity regular; relating to matters of form." (C. J. S. vol. 37, p. 115.)

"Act—In civil law, a writing which states in legal form that a thing has been done, said or agreed." (1 Bouvier's Law Dictionary, p. 150, citing Marlin Report.)

From these definitions, it would appear that the phrase "formal act" would require not merely any writing, but one

executed in due form and/or with solemnity. That this is the intendment of the law although not expressed in exact language is the reason for the clarification[2] made in Article 621 of the new Civil Code which specifically requires, the prohibition to be in "an instrument acknowledged before a notary public". This is as it should be. Easements are in the nature of an encumbrance on the servient estate. They constitute a limitation of the dominical right of the owner of the subjected property. Hence, they can be acquired only by title and by prescription, in the case of positive easement, only as a result of some sort of invasion, apparent and continuous, of the servient estate. By the same token, negative easements can not be acquired by less formal means. Hence, the requirement that the prohibition (the equivalent of the act of invasion) should be by "a formal act", "an instrument acknowledged before a notary public."

The Court of Appeals found as undisputed the fact 'that plaintiffs' lot (dominant) as well as defendant's lot (servient) are covered by Original Certificates of Title Nos. 7225 and 7545, respectively', both issued by the Register of Deeds of Ilocos Norte, in pursuance of the decrees of registration issued on December 27, 1937, in Cadastral Case No. 51, G.L.R.O. Cadastral Record No. 1212 of Laoag, Ilocos Norte. Certified copies of these certificates of title are found as Annexes "A" and "B", pages 77 to 80 inclusive of the Record on Appeal. In both of them, it does not appear any annotation in respect to the easement supposedly acquired by prescription which, counting the twenty (20) years from 1913 or 1914, would have already ripened by 1937, date of the decrees of registration. Consequently, even conceding arguendo that such an easement has been acquired, it had been cut off or extinguished by the registration of the servient estate under the Torrens System (without the easement being annotated on the corresponding certificate of title, pursuant to Section 39 of the Land Registration Act.[3]

Wherefore, the decision of the Court of Appeals appealed from is hereby reversed; the injunction issued herein dissolved; and the case remanded to the court of origin for adjudication of the damages, if any, occasioned by the issuance of the injunction. Without pronouncement as to costs. So ordered.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., and Gutierrez David, JJ., concur.

[1] Cortes vs. Yu-Tibo, 2 Phil., 24; Fabie vs. Lichauco, 11 Phil., 14.

[2] The Court of Appeals admits that Article 621 of the new Civil Code merely clarified "the formal act" provision of Article 536 of the Spanish Civil Code. See also II Padilla's Civil Code Annotated, 1956 Edition, p. 296.

[3] In relation to Section 11 of the Cadastral Law (Act No. 2259).

RESOLUTION

January 20, 1961

BARRERA, J.:

The Decision in this case, promulgated on June 30, 1960, provided, among others, for the lifting of the preliminary injunction issued by the lower court directed against petitioner's construction of a building allegedly being made in violation of Municipal Ordinance No. 3, series of 1909 of the municipality of Laoag, and in disregard of respondents' right to light and view.

In their motion for reconsideration timely presented, respondents claim that the findings of the lower court, affirmed by the Court of Appeals, that the building under construction violated the aforementioned ordinance (from which no appeal was interposed) having become final, justify the issuance of and making permanent the injunction already issued.

There is no question that respondents' house, as well as that of petitioner, are within their respective properties; that respondents' wall stands only 50 centimeters from the boundary of the 2 lots, whereas, the wall of the petitioner's building was constructed 1 meter from the boundary or 1 meter and 50 centimeters from the wall of the house of respondents. As a result, the lower court found that the eaves of the two houses overlap each other by 24 centimeters. This, the Court of Appeals declared to be violative of Ordinance No. 3, series of 1903, amending Sections 1, 5, 6, and 13 of the Municipal Ordinance of June 3, 1903, which requires a distance of 2 meters, measured from eaves to eaves of adjoining buildings of strong materials.

It must be noted, however, that the Ordinance in question was adopted since 1909 and was, therefore, already in force at the time the house of respondents was reconstructed in 1946 after the building originally erected thereon was burned in 1942. If respondents constructed their house at least one meter from the boundary line, as petitioner has constructed hers, there would be no overlapping of the eaves and there would not be any violation of the ordinance. As things now stand, in view of such construction by the respondents, the overlapping of the eaves and the consequential violation of the ordinance can not entirely be attributed to petitioner, as to require her alone to make the adjustments necessary for the observance of the 2-meter eaves-to-eaves distance from her neighbors. If any compliance with the ordinance would be exacted, the adjustment should be made not only by petitioner, but also by the respondents. There is, therefore, no reason for the continuation of the injunction.

In view of the foregoing, and as the other grounds respondents' motion for reconsideration had been already duly considered in the Decision, the said motion is hereby denied, for lack of merit. So ordered.

Paras, C. J., Bengzon, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Gutierrez David, Paredes, and Dizon, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.