

**FABIAN B. S. ABELLARA, PLAINTIFF AND APPELLANT, VS.
HERMENEGILDO BALANAG ET AL., DEFENDANTS AND APPELLEES.**

G.R. No. 11970. March 22, 1918

Ponente: CARSON, J.

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CARSON, J.:

In this action the plaintiff and appellant seeks to eject some nineteen alleged trespassers, or squatters, from the hacienda described in the complaint.

Plaintiff undertook to maintain his action without the aid of counsel and as might be expected, the proceedings in the court below fell into the utmost confusion, and culminated in the dismissal of the complaint upon motion, after the plaintiff had submitted his evidence and before any witnesses had been called for the defendants.

Defendants, in their answer, denied the plaintiff's allegations of ownership of the lands described in his complaint and set up a claim of prescriptive title to the various parcels of land occupied by themselves.

The material evidence submitted by the plaintiff consisted of a duly registered composition title to the hacienda issued in the name of his father; a deed of gift of the hacienda to himself, executed by his father in a public instrument; and his own testimony as to the identity of the land described in the complaint with the land included in the composition title, and as to the entry upon and possession of various parcels of land, within the boundary lines of this tract, by the defendants.

He testified that some time after the Spanish-American war these defendants entered upon the hacienda without his knowledge or consent; that after gaining an entry, they took possession of various parcels of land and constructed houses thereon, and have continued in possession ever since; that at first he had tolerated their presence on the hacienda, and had made no attempt to assert his rights of ownership, because of the unsettled conditions of the country; that, later on, he demanded rent and made a number of efforts to secure the recognition of his rights by amicable arrangements with the intruders; but that all his proposals for a friendly settlement of his claims had been rejected so that, finally, he had been compelled to institute this action.

Had he established his own title to the hacienda by satisfactory evidence, this testimony would seem to have been sufficient to put the defendants on their proof as to their respective claims of prescriptive title. The burden of proof of a claim of prescriptive title to lands included within a registered grant of lands from the Spanish sovereign, rests upon him who asserts it; and we cannot agree with the contention of counsel for the defendants that it affirmatively appears from the testimony of the plaintiff himself that the defendants or any of them had been in open, notorious and adverse possession under a claim of ownership for the full prescriptive period of ten years.

It is true, as intimated by the trial judge that the admissions of the plaintiff went far to establish the prescriptive title of a few of the defendants; but we are of opinion that the evidence is not sufficiently definite and concise as to the nature of their occupation of any of the parcels of land in question, to sustain an affirmative ruling, in favor

of their claims in this regard.

The trial judge dismissed the complaint on two grounds: first, that plaintiff's evidence was insufficient to sustain a finding as to the precise location and extent of the various parcels of land occupied by the defendants; and, second, that plaintiff's documentary evidence was insufficient to establish title in himself, because it does not appear that he accepted the donation in a public instrument and notified the donor of his acceptance in the manner and form prescribed in article 633 of the Civil Code.

We cannot give our consent to the doctrine relied upon by the trial judge in support of the first ground of dismissal of the complaint. While it is true that the defendant in an action of this kind who sets up a claim of prescriptive title to lands within the boundary lines of the lands of another, must establish the precise location and extent of the lands claimed by him before judgment can be entered declaring him to be entitled to retain possession of these lands by virtue of his prescriptive title; it is not necessary for the plaintiff to establish the precise location and extent of the lands claimed or occupied by the defendant, in order to establish his right to a judgment for possession, provided he shows that the defendant is unlawfully in possession of any part of the tract included in his title deeds. Proof as to the location and extent of the lands occupied by a trespasser in such cases might well be of vital importance upon a question as to the damages which should be allowed the plaintiff, but it is by no means essential to maintain a judgment for possession. Plaintiff may not know, and may have no means of knowing, the precise location and extent of the land claimed by the defendant; but if he establishes title to the entire tract in himself, and the defendant appears to be in possession of any part of the tract, and fails to establish prescriptive title thereto, it matters not what the location or extent of the part so occupied may be, the sheriff can levy execution on a judgment for possession in favor of the plaintiff, by expelling the defendant from any part of the property of the plaintiff upon which he may be found.

From what has been said it is clear that if the judgment of dismissal should be sustained, it must be sustained on the second ground relied upon by the trial judge, and it becomes necessary for us to consider and decide the questions raised by the plaintiff's claim of title based on a deed of gift of the hacienda executed in due form in a public document, it not appearing that the donee had accepted the donation in the original deed nor in a separate public instrument, and that the donor had been notified of such acceptance in conformity with the provisions of article 633 of the Civil Code.

The provisions of that article are as follows:

"In order that a gift of real property may be valid it shall be made in a public instrument, stating therein in detail the property bestowed as a gift and the amount of the charges, which the donee must satisfy.

"The acceptance may be made in the same instrument bestowing the gift or in a different one; but it shall produce no effect if not made during the life of the donor.

"If made in a different instrument the acceptance shall be communicated to the donor in an authentic manner, and this proceeding shall be recorded in both instruments."

It is contended on the one hand, that the provisions of this article touching the acceptance of donations of real estate in a public document set forth merely the form of the probative documents by which the acceptance must be evidenced so as to prejudice the interests of third persons; and that a mere failure to comply with the prescribed formalities in this regard does not affect the validity of the donation if the fact of acceptance and notice can be established by other competent evidence. On the other hand, it is said that under the very terms of the statute the validity of a gift of real estate is made to depend on a strict compliance with the formalities prescribed in the code as indispensable requisites for the execution of a gift of real estate, the purpose of the legislator being to deny the

power of a donor to make a valid gift binding upon himself or any one else in any other form than that indicated in the Code.

In the case of *Velasquez vs. Biala* (18 Phil. Rep., 231), this court, construing the provisions of article 633 of the Code, and citing confirmatory comment by Scaevola and Manresa, held that:

"In order that a gift of real property may be valid in law, including dowry and other gifts propter nuptias consisting of realty, it is absolutely necessary that it be made in a public instrument duly executed with all the prescribed formalities, and such a document is required, not only as regards third persons, but as between the parties themselves."

We are of opinion, and so hold, that like reasoning applied to the construction and interpretation of the various articles of the Code dealing with the acceptance of donations of real estate, more especially articles 623, 629, and 630, leads to the conclusion that it is an indispensable requisite to the perfection and validity of a gift of real estate that the gift be accepted in a public document; and that title to real estate does not pass from the donor to the donee by virtue of a deed of gift, until and unless the gift is accepted in a public document and the donor duly notified of its acceptance.

Articles 623, 629, and 630 are as follows:

"Art. 623. A gift is consummated upon the donor having knowledge of its acceptance by the donee."

"Art. 629. A gift does not bind the donor nor produce any effect until accepted.

"Art. 630. The donee must, under pain of nullity, accept the gift in person or through a person authorized by a special power for the purpose or having a general or sufficient power of attorney."

The following citations from Manresa's commentaries on articles 623, 629, 630, 631, 632, and 633 of the Civil Code quite clearly set forth the accepted doctrine of the Spanish authorities as to the meaning and effect of these code provisions :

"The acceptance is therefore the essence of donations and has always been so; yet even the Roman people, so fond of legal formalism, have conceded tacit acceptance based on the fact that when the donee took possession of the property donated he clearly set forth his acceptance of the donation.

"The French Code, following the doctrine of the ordinance of 1731, required express acceptance; and this principle, which predominates in the majority of the Codes, has been brought into our own, as we shall presently see.

"We knew from article 618 that the essence of a donation is that it be accepted. Article 623 says something more as, in accordance with same, a donation is not consummated until the very moment when the donor perceives the donee's acceptance.

"Article 623 supposes of course that the acceptance may be made subsequently to the offer, or, let us say, the donation. This admitted, nothing is more natural than to require that the donor be informed in order that he may know that the favor he proposes to confer is accepted. But, at what moment is the donation perfected? Article 623 says that it is when the donor first learns of the acceptance. The perfection of the donation supposes a demandable juridical relation; the donor cannot then repent; he can be compelled to fulfill his offer, to deliver what he wished to donate. But there is another article in the same Code, under the same title, No. 629, which apparently at least is in contradiction with No. 623. It provides: 'The donation does not bind the donor nor produce any other effect until accepted.' Upon our examination of article 629 we shall endeavor to explain this apparent contradiction or make known the idea that should prevail." (Vol. 5, 2d ed., p. 86.)

"Acceptance assumes exceptional importance in donations. Articles 623, 625, 627, and 629 to 633 treat of it. We have seen what persons may accept donations. The present article refers to the necessity and effects of acceptance.

"The provision of article 629 is clear. As Navarro Amandi says, if there were no other provision except this one, the donor would be bound and, from the moment the donation was accepted, could not at will revoke it. But the provision of article 623 is also clear, according to which the donor can at will revoke his donation even after its acceptance, provided he does so before learning of its acceptance.

"Relation between article 625 and 629.—Commentators agree that these articles, 623 and 629, are contradictory. At first sight they do so appear to be; but they are capable of harmony. What solution ought to be adopted? In our judgment, there is no possible doubt. The solution given by article 623 is the one most in accord with reason, with the other articles that treat of donations, and with the rules governing contracts. It is most in accord with reason because an acceptance, not known to the donor, lacks finality, though it has great value as it is essential in donations; but the possibility of its remaining unknown to the donor ought not to exist. Donations do not produce effects unless they have been accepted; moreover, the donor can revoke them theretofore. But, until when has he this power? If it be admitted that it is up to the time when the acceptance is still unknown to the donor, the latter is kept in such a state of uncertainty that even in a case of necessity he cannot dispose of the donation, because he does not know whether there has been acceptance, nor, for this reason, whether his disposal of the donation would be efficacious. No one would wish therefore to contract with him. . In order that the donor may be sure in the exercise of his own right, it is necessary to fix a definite time, before which he knows that he may dispose of his property, after which, he likewise knows that what he wished to donate no longer belongs to him. This time must be necessarily that when the donor learns of the acceptance of his donation. This conclusion is also supported by article 631. Notice of acceptance to the donor is obligatory. By article 633, the acceptance must be notified in an authentic manner; and by article 632, according to which verbal donations of personal property are valid only when the delivery and the receipt of the thing are simultaneous. This conclusion is also confirmed by article 1262, relative to contracts: 'Consent,' it says, 'is shown by the concurrence of the offer and the acceptance of the thing and the consideration; these are to constitute the contract. The acceptance made by latter does not bind the person making the offer except from the time it came to his knowledge.' " (Vol. 5, 2d ed., pp. 100-102.)

"Pursuant to statutes formerly in force, donations followed the rules for contracts. It cannot be affirmed with certainty that a public instrument would necessarily be required, except for the purposes of registration in the registry of property. The sole formality consisted in the insinuation, and this was an indispensable requisite, both with regard to real and personal property, whenever the value of the gift exceed 500 maravedis in gold." (Vol. 5, 2d ed. pp. 108, 109.)

"Period during which the acceptance must be made.— Article 633 adds, finally, that the acceptance must be made during the life of the donor. This proves that it may be delayed more or less but that, if not made before the donor's death, it is not efficacious. What shall we say if the donor dies after the acceptance but before the notice? It cannot be claimed that a dead man can be notified. On the other hand, article 633 does not say that notice shall be given the donor or his heirs, but necessarily the donor.

"What shall we deduce from all that? What we have already stated in the commentary made on article 629. When the acceptance is made after the offer in a separate instrument, two moments are to be considered in it: One, with respect to the donee, which is that moment when he makes his acceptance which, as to himself, is certain; the other, with respect to the donor, which is the moment when he learns of the acceptance, as, prior to that time, he knew nothing of it, had no evidence of it, and, for himself, no acceptance even existed. Therefore if the donor dies before notice is given, although after the donation has been accepted, the donation is not efficacious, has not been perfected, does not obligate the donor's heirs—there has not been a concurrence of the two wills; death has

separated them forever." (Vol. 5, 2d ed., pp. 114, 115.)

"Is implied acceptance of the gift admissible?—The law does not say so positively but it must be deduced that the acceptance, as a general rule, must be express. In gifts of real property, when the delivery and the receipt are simultaneous, article 632 presumes of course that there is acceptance; but, with this exception, the same article 632 and article 633 prove that the acceptance must be express, inasmuch as it must be set forth in writing.

"A donates in writing a certain sum to B who is in a distant place. B collects the sum in the place where he is, and disposes of it; but his acceptance does not appear in writing. One year afterwards, A revokes the donation or his creditors cause him to be declared in bankruptcy and claim that the donation be made ineffective. The revocation or the claim is admissible: there was no true acceptance; the gift did not come into existence. It will be said that this solution is absurd, that common sense tells us that the taking possession of the property evidences the donee's will to accept. That is all true, but the law so requires: *Dura lex sed lex*. Certain it is that a simple letter, which, on the other hand, might very naturally have been expected and was even demanded by courtesy, would have avoided all question; but the letter was not written, and legally there is neither donation nor acceptance.

"Our Code has not ventured to discard the doctrine admitted by other Codes. For our part, we confess that we do not look with favor upon the solution that has prevailed. The law ought always to admit the dictates of reason, to legislate against them is dangerous. Well and good that the fact of the taking of possession be placed in the knowledge of the donor, that is natural and right. But, knowing that the donee received the property, to be able to claim that there was no acceptance, is to carry formalism to such an extreme that the spirit of modern laws does not consent.

"Our prior legislation, as well as the Roman Laws, admitted implied acceptance. According to the decision of October 1, 1888, the payment of the taxes levied on the bestowed property, the possession ' of the latter with the muniments of title drawn up in behalf of the donee, and the celebration of masses, imposed upon the donee, as an encumbrance, were all acts that accredited acceptance. Implied acceptance was also admitted in the provinces governed under special laws.

"The effects with respect to the possession of real property, which mitigate in part the rigor of the doctrine above laid down, are to be kept in mind." (Vol. 5, 2d ed., pp. 118, 119.)

In setting forth at length the foregoing citations from Manresa we must not be understood as accepting at this time all he says upon this subject. They have been inserted here merely because, together with the citations in the former opinion (*Velazquez vs. Biala*, supra) they quite clearly indicate the accepted Spanish doctrine as to the necessity for acceptance of donations of real estate in the form indicated in article 633 of the Code, and confirm our ruling that title to real estate does not pass from the donor to the donee by virtue of a deed of gift until and unless it has been accepted in a public instrument and the donor duly notified thereof.

We conclude that the judgment of dismissal entered in the court below should be affirmed on the ground that plaintiff failed to establish title in himself to the hacienda upon which he could maintain an action of ejectment.

Since this appeal was taken plaintiff, evidently under advice of counsel, executed a formal acceptance of the donation of the hacienda in a public document and has submitted that instrument, together with proof of notice of acceptance to his father, as the basis of a motion for a new trial on the ground of newly discovered evidence. It is hardly necessary to say that evidence of the execution of his acceptance of the donation, after the trial closed, cannot be treated as newly discovered evidence as to the fact of acceptance which it was incumbent upon him to establish during the trial. From what has been said already it is clear that plaintiff did not acquire title to the hacienda until the date of the execution of the public document evidencing his acceptance of the donation and

notice thereof to the donor. So that, whatever rights he may have to institute and maintain a new action of ejectment in reliance upon his claim that he has acquired title to the hacienda since the date of the dismissal of this action, it is clear that the present action was properly dismissed on the ground of failure of proof of title in the plaintiff at the time when the action was instituted and later when judgment of dismissal was entered by the trial court.

Perhaps we should indicate that in our disposition of this appeal, we have wholly disregarded the oral evidence of the plaintiff as to an alleged deed of gift of the hacienda executed many years prior to the date of the execution of the deed of gift actually in the record. He says that the original deed executed in 1897 was destroyed by fire, and that the deed now in the record, dated 1913, was executed with a view to the perfection of his title deeds, and to remove all doubts as to his rights in the premises. The trial judge did not accept this secondary evidence as sufficient to establish the execution and loss of this alleged deed of gift; and we think that in view of the failure of the plaintiff to perfect the gift evidenced by the deed of 1913 until this case was brought here on appeal, it may fairly be assumed that if a deed of gift was in fact executed in 1897, it was as defective for the purpose of conveying title to the hacienda as was the deed of 1913; and certain it is that the oral evidence of the plaintiff as to its execution is wholly insufficient to maintain a finding that such a deed was executed and accepted with notice to the donor of the acceptance in the manner and form prescribed in the Code. Plaintiff relied wholly upon his claim of ownership of the hacienda in support of his right to maintain this action, and having failed to establish this claim of ownership under either deed of gift, dismissal of the action was inevitable.

Twenty days hereafter let judgment be entered affirming the judgment of dismissal in the court below, with the costs of this instance against the appellant, and ten days thereafter let the record be returned to the court wherein it originated. So ordered.

Arellano, C. J., Torres, Araullo, Street, Malcolm, Avanceña, and Fisher, JJ. concur.

Johnson, J., did not sit in the case.

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