

MANUEL SORIANO, PLAINTIFF AND APPELLEE, VS. OSCAR STERNBERG, DEFENDANT AND APPELLANT.

G. R. No. 15628. November 18, 1920

Ponente: MALCOLM, J.

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MALCOLM, J.:

By means of this action, the plaintiff desires to obtain a judicial order, to compel the defendant to close the windows in the wall of his house adjacent to the property of the plaintiff, because the wall of defendant's house is less than 2 meters from the division line. The defendant pleads prescription and relies exclusively upon this defense. The lower court agreed with the plaintiff's contention and ordered the windows of the defendant's house to be closed, with costs against the defendant.

The facts, the law, and the issue are certain.

The case was submitted to the lower court upon the following stipulated facts:

- That the wall of the house of defendant Oscar Sternberg, in which are found four windows and a gallery (upper story), two windows, one door and an opening with wooden lattice (lower story), with the dimensions indicated in the diagram, Exhibit A, attached to, and made a part of this agreement, is 1 meter and 36 centimeters (1.36 m.) distant from the dividing line between the lot on which said building stands and the lot of the plaintiff.
- That the building of the defendant has stood with the identical openings before mentioned, since the year 1905.
- That both lawyers will inspect the building to determine precisely the distance existing between its outermost portion and a line erected on the dividing line perpendicular to it, which distance they will embody in a written agreement to supplement the present.
- That the views which defendant pretends to have over plaintiff's lot are direct, and that the windows and the gallery of plaintiff's edifice have direct views on defendant's lot.
- That in the Torrens titles which both parties have to their respective buildings, there does not appear any easement of view in plaintiff's title, nor any right to easement in defendant's.
- That considering these facts, the point at issue between both parties is submitted to the decision of the court.

The provisions of law upon which plaintiff bases his action concern easements, and are found in the Civil Code. Reliance is principally made upon the first paragraph of article 582 of the Civil Code reading as follows: "No windows or balconies or other similar projections which directly overlook the adjoining property may be opened or built without leaving a distance of not less than 2 meters between the wall in which they are built and such adjoining property."

The provisions of law upon which the defendant grounds his defense concern prescription of actions, and are found in Chapter III of the Code of Civil Procedure. The maximum time within which an action for relief can be

brought is there fixed as within ten years after the cause of action accrues.

The subject of easements of light and view is so thoroughly covered in two learned decisions handed down by the Chief Justice that it would be highly unprofitable to enter this intricate field of the law. (Cortes vs. YuTibo [1903], 2 Phil., 24; Fabie vs. Lichauco [1908], 11 Phil., 14.) But here there is no question of easement. The point now to be decided is whether or not a right of action to enforce article 582 of the Civil Code may be lost by failure to prosecute within the prescriptive period fixed by the Code of Civil Procedure.

It should first be noted that the defendant in this case has never prohibited the plaintiff from building on his, the plaintiff's, own land, any wall that he may desire to construct. Further, it should be noted that the offending edifice of the defendant was constructed in 1905. This was the year when the defendant violated the law. This was the date when the cause of action accrued. Nevertheless, the windows complained of were permitted to be open for thirteen years without protest. The plaintiff must, consequently, by reason of his own laches, be considered to have waived any right which he may have had to compel the windows to be closed. The argument of plaintiff that it was only in 1917, when he bought the land in question, that the statute of limitations began to run, is not convincing, for the general rule is, that once the statute begins to run, it never stops, and the transfer of the cause of action does not have the effect of suspending its operation. (Ervin vs. Brooks [1892], 111 N. C, 358.)

It is our holding that plaintiff's right of action under article 582 of the Civil Code accrued in 1905 when the windows in defendant's house were opened, and that, in accordance with Chapter III of the Code of Civil Procedure, his action has prescribed.

A point was made at the hearing of this case as to the right of the attorney for the appellee to appear and make an oral argument. The record discloses that the appellee was not permitted to file a brief because of his failure to ask for an extension of time within the period fixed by the rules of this court. (Rules 22, 23.) This failure does not, however, prohibit counsel from making an oral argument at the hearing, but does prohibit him from filing a memorandum or brief at that time, for this would be tantamount to absolving him from his failure to file his brief in time. The oral argument of appellee has been noted and has been taken into consideration.

Judgment is reversed, and the plaintiff's complaint is dismissed, with costs of both instances against him. So ordered.

Mapa, C. J., Araullo, Street, Avanceña and Villamor, JJ., concur.

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