

CRISPULO SIDECO, PLAINTIFF AND APPELLANT, VS. LEOCADIO SARENAS AND RUFINO SARENAS, DEFENDANTS AND APPELLEES.

G. R. No. 15700. September 18, 1920

Ponente: MALCOLM, J.

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MALCOLM, J.:

This appeal requires an interpretation and an application of the various provisions of Philippine law which concern the subject of irrigation.

The rubric of the case is brief. Two parties, Crispulo Sideco on the one hand, and Leocadio Sarenas and Rufino Sarenas on the other hand, claim the exclusive right to the use of the waters flowing through the estero [estuary] Bangad, Province of Nueva Ecija, for irrigation purposes. The claim of Sideco goes back to 1885 when the predecessor in interest of his father constructed a dam in these waters; the use of the dam was afterwards interrupted by outside causes such as imprisonment and war, but again re-asserted in 1911, 1915, and 1916. Exactly what the two Sarenas' contention is, is not quite clear on the facts before us. However, it appears that they made application to the Director of Public Works, only to meet with the opposition of Sideco, and that the Director of Public Works, with the approval of the Secretary of Commerce and Communications, granted the two Sarenas the right, in preference to all other persons, to use the waters of the estero Bangad. Sideco then took the proceedings to the Court of First Instance of Nueva Ecija. After trial, judgment was entered, dismissing the complaint and the appeal of Sideco and confirming the decision of the administrative authorities, with the costs against the plaintiff.

The further appeal of Sideco to this court, while conceding the correctness of the findings of the trial court, squarely challenges its judgment.

The Philippine law on the subject of waters has both a constitutional and a statutory basis and has both a civil law and a common law origin. The Philippine Bill authorized the Government of the Philippine Islands to make rules and regulations for the use of waters. "Beneficial use," reads this portion of the Organic Law, "shall be the basis, the measure, and the limit of all rights to water in said islands." Priority of possession, rights to the use of water which had vested and accrued and which were recognized and acknowledged by the local customs, laws, and the decisions of the courts, were to be respected. The possessors and owners of such vested rights were to be maintained and protected in the same. (Act of Congress of July 1, 1902, sections 19, 50; 32 Stat. at L., 691.)

Local statutory law relating to irrigation is made up of the Spanish Law of Waters of August 3, 1866, various provisions of the Spanish Civil Code, and the Irrigation Act, Act No. 2152 of the Philippine Legislature as amended by Act No. 2652. The Law of Waters was held as in force in the Islands in a decision of the Supreme Court of the Philippine Islands affirmed by the Supreme Court of the United States; and Act No. 2152 continued this law and the provisions of the Civil Code in the matter of waters, and all other existing laws dealing with waters and irrigation systems in force in so far as they are not incompatible with the provisions of the Act. (Ker & Co. vs. Cauden [1906], 6 Phil., 732; [1912], 223 U. S., 268; Act. No. 2152, sec. 51.) The Irrigation Act, like the

Organic Law, explicitly provides that it shall not work to the detriment of rights acquired prior to its passage. (Sees. 1, 50.) Like too the Organic Law, the doctrine of beneficial use is recognized. Priority of appropriation gives the better right as between two or more persons using the public waters. (Sec. 3.) The Civil Code and the Spanish Law of Waters, which must be looked to in order to determine rights which had vested prior to the enactment of the Irrigation Act, provide that the use of waters is acquired either by administrative concession or by prescription of twenty years. (Civil Code, art. 409, and various provisions of the Spanish Law of Waters.)

Administrative machinery for the settlement of disputes as to the use of waters is provided by the Irrigation Act, as amended. Controversies must be submitted to the Secretary of Commerce and Communications through the Director of Public Works. The "decision" of the Secretary thereon is final "unless appeal therefrom be taken to the proper court within thirty days after the date of the notification of the parties of said decision. In case of such appeal the court having jurisdiction shall try the controversy de novo." (Sec. 4.) A more extensive method is also provided, somewhat akin to our cadastral system, which makes it the duty of the Director of Public Works to make a technical examination of streams and to prepare a list of priorities. In the performance of this work, the Director of Public Works or any official especially authorized by Him, may examine witnesses under oath, and can issue for this purpose subpoenas and subpoenas daces tecum. (Sees. 8, 41.) Certificates signed by the Secretary of Commerce and Communications are then granted each appropriator. (Sees. 9, 18.) "Appeal" lies from the "decision" of the Director of Public Works, as approved by the Secretary of Commerce and Communications, to the Court of First Instance of the province in which the property is situated. Such action must be brought within ninety days of the date of the publication of the approved list of priorities. (Sec. 10.)

The provisions of Philippine Irrigation Law have been gone into somewhat more extensively than is absolutely essential for the disposition of the instant appeal, for the very good reason that the procedure to be followed in such cases does not seem to be well-known. Narrowing somewhat our inquiry, there next logically follows a discussion of the principles which concern priority of appropriation, Spanish grants, and prescription.

The doctrine of prior appropriation, as we have said, is here recognized as the fundamental principle which must primarily determine the vital industrial question of what constitutes a valid appropriation of waters for irrigation purposes. As we have also stated, there must be in this jurisdiction an intention to use the waters for a beneficial purpose. The precise point of time when the right attempted to be asserted began is regarded as commencing when the claimant started to construct his dam, ditch, flume, or other appliance, by means of which his appropriation is effected, provided he prosecutes his enterprise to success and with reasonable diligence. (*Nevada Ditch Co. vs. Bennett* [1896], 30 Ore., 59.)

The decisive question in this case thus reduces itself still further to the determination of which of the two rival claimants has shown priority of use of the waters of the estero Bangad, and this question must be determined herein in conformity with the civil law, since this was a right which for all practical purposes accrued prior to the enactment of the Irrigation Act.

As to plaintiff's case, it is admitted that Sideco's predecessor constructed a dam in this estero in 1885. But no administrative concession with this end in view is proved. (See Civil Code, art. 409; Spanish Law of Waters, arts. 234, 235.) Counsel, however, contends, with some slight degree of effectiveness, that there is here a presumption, uncontradicted by other evidence, that the law has been obeyed. (Code of Civil Procedure, sec. 334, No. 31.) He also claims title by prescription of twenty years. (Civil Code, art. 459; Spanish Law of Waters, sees. 39, 42.) To found a prescriptive water right on adverse possession, the enjoyment of it must have been continuous during the full prescriptive period, under a claim of right hostile and adverse to those who were injured by such use so as to exclude them from a similar use of the water. On the facts found by the trial judge, plaintiff gains some standing for his claim because of the adverse character of his use, interrupted by forces over which he had no control, and

the various attempts he has made to consummate the construction of an irrigation dam.

As to the case made for the defendants, little can be said. The facts which seem to have convinced the Director of Public Works and the Secretary of Commerce and Communications of the better rights of the defendants are not before us. The defense in the lower court was merely a general denial and an attempt to overcome plaintiff's pretensions, while not effectively making an affirmative showing.

The facts of record are far from satisfactory and fall short of that certainty which is always desirable in judicial trials. This leads us to say something further regarding the decisions of administrative officers in irrigation controversies and the procedure which should be followed when the matter is brought before the courts.

In many of the states of the American Union which have adopted irrigation codes, notably in the State of Wyoming, general authority over the making of appropriations is given to the state engineer. The statutes placing discretion in these matters with the state engineer are not unconstitutional as conferring on him judicial powers, since his determination is at most quasi-judicial only and since the right of direct appeal to the courts is expressly allowed. (*Boise etc. Co. vs. Stewart* [1904], 10 Idaho, 38; *Farm Inv. Co. vs. Carpenter* [1900], 9 Wyo., 110.) The engineer is authorized to adjudicate on priorities and grant permits. Proceedings in court are a continuation of ex parte proceedings before an executive official. Such officers act merely in an administrative capacity. However, the decisions of these administrative officers, when not appealed from in time, are conclusive. (See *Wiel, Water Rights in the Western States*, Part I, Chapter VIII; Part IV, Chapter II *Waha Lewiston & Water Co. vs. Lewiston-Sweetwater Irrigation Co. Ltd.* [1907], 158 Fed., 137.)

Parenthetically, it may be remarked that the decision of the Director of Public Works, affirmed by the Secretary of Commerce and Communications, containing as it does the technical findings of officers especially qualified in irrigation engineering, should invariably be made a part of the judicial record because, (1) the determination of these officials would be most helpful to the courts, and (2) the exact date of the decision is of moment since it decides whether the appeal was taken in time. The courts, without doubt, would entertain great respect for the decisions of these administrative officers. Trial courts should require that such decisions be made a part of the complaint before proceeding with the action.

Another thought brought forth by the facts before us is, that since the prime question will usually concern priority of appropriation, the defendant as well as the plaintiff must present affirmative proof if he expects to win his case. Merely attempting to undermine plaintiff's proof is not sufficient, for the plaintiff, having once shown the date of his appropriation, if the defendant cannot show an anterior use, obviously the plaintiff must win.

On the facts before us, the court has come to the conclusion that plaintiff has demonstrated priority of appropriation. The result, consequently, must be, to reverse the judgment appealed from, to declare that the plaintiff has the preferential right to the waters of the estero Bangad for the irrigation of his land, and to order that this decision be registered with the register of deeds of the Province of Nueva Ecija. The costs of both instances shall be taxed against the defendants. So ordered.

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

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