

TIBURCIO SAENZ, PLAINTIFF AND APPELLANT, VS. FIGUERAS HERMANOS, DEFENDANT AND APPELLEE.*G.R. No. 2085. August 10, 1909*

Ponente: JOHNSON, J.

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It appears from the record that the plaintiff and the defendant own adjoining lots within the municipality of Iloilo; that the defendant had constructed or was constructing a house of strong materials upon its lot; that the line of the said house on the side toward the lot belonging to the plaintiff was less than two meters from the dividing line of the two lots; that the said house was of two stories; that on the side of the house toward the lot of the plaintiff, the defendant in the first story had placed three windows and in the second story had placed five windows, each looking directly upon the lot of the plaintiff; that on the second floor, both in the front and rear of the house was a balcony, also opening directly upon the lot of the plaintiff; and that the defendant had not obtained the permission of the plaintiff to place the said windows and balconies in the manner above indicated.

The defendant filed a general and a special denial. In its special denial the defendant alleged that its house was being constructed in accordance with the law and the customs of the place.

After hearing the evidence adduced during the trial of said cause, the lower court made the following findings of fact:

"The plaintiff's lot is now vacant but he intends to build a house thereon for business purposes, and with that end in view has already deposited some lumber in said lot. The defendants have constructed a two-story house on their lot, using the ground floor for stores, and the upper floor as a dwelling. They have erected said house at a distance of 71 centimeters from the dividing line at the front part, and at a distance of 70 centimeters at the rear. The house of the defendants is being put to the use for which it was built. The defendants have opened three windows on the ground floor of their house, in the part that overlooks the lot of the plaintiff, each window being 1 meter and 20 centimeters wide and 2 meters high; on the upper floor they have opened 5 windows, each 2 meters and 11 centimeters high and 1 meter and 60 centimeters wide; they have also constructed a balcony at the front part of the house above the ground floor, opening directly upon the lot of the plaintiff, and another balcony at the rear part of the house, which up to the present time opens directly upon the plaintiff's lot, although the defendants state that, according to the plan, said part is to be inclosed with boards. All of said windows are required for the proper lighting and ventilation of said house, and for the circulation of air therein. The house of the defendants is 23 meters long and built almost parallel to the dividing line between the plaintiff's lot and that of the defendants. All of said windows and balconies are at a distance of less than one meter from the dividing line of the plaintiff's lot and that of the defendants, and are looking directly over the same."

The plaintiff claims that, under articles 581 and 582 of the Civil Code, the defendant is prohibited from constructing his house and opening the windows and balconies looking directly upon his property in the manner above described, and prays that the court issue an order directing the defendant to close said windows and that the said defendant be prohibited perpetually from constructing openings in its house except in conformity with said

articles of the Civil Code.

The lower court, after a full consideration of the evidence adduced during the trial of the cause and after making the above findings of fact, concluded his sentence in the following language:

"In view of the circumstances mentioned above, and although I find that the windows of the house come within the prohibition contained in article 582 of the Civil Code, I am of the opinion that the plaintiff is riot entitled to the judgment asked for, or for any other judgment in his favor. Therefore, it is ordered that judgment be entered in favor of the defendant for the recovery of the costs herein.-(Signed) Henry C. Bates, judge of the Ninth Judicial District."

From this sentence the plaintiff appealed.

No motion was made for a new trial in the court below. The plaintiff excepted only to the judgment of the lower court, basing his objection upon the ground that the sentence of the lower court was contrary to the provisions of said article 582, and in this court insists that he has a right under said provisions of the Civil Code to have said windows closed and to have the defendant prohibited from making openings in the side of the house overlooking his yard except those openings provided for under said article.

Article 581 of the Civil Code is as follows:

"ART. 581. The owner of a wall which is not a party wall, adjoining another's estate, may make in it windows or openings to admit light, at the height of the ceiling joists or immediately under the ceiling, of the dimensions of thirty centimeters square, and, in any case, with an iron grate embedded in the wall and a wire screen.

"However, the owner of the house or estate adjoining the wall in which the openings are made may close them, if he acquires the part ownership of the wall and should there be no agreement to the contrary.

"He may also obstruct them by building on his land or raising a wall adjacent to that having such opening or window."

Article 582 of the Civil Code provides as follows :

"ART. 582. Windows with direct views, or balconies or any similar openings projecting over the estate of the neighbor, can not be made if there is not a distance of, at least, two meters between the wall in which they are built and said estate.

"Neither can side nor oblique views be opened over said property, unless there is a distance of sixty centimeters."

The foregoing provisions of the Civil Code enumerate the conditions under which an adjoining lot owner may enjoy the easement of light and view. These provisions are positive and persons attempting to exercise easement of light and view upon property of adjoining landowners are governed by its provisions. Said article 582 absolutely prohibits the construction of windows with direct views, or balconies or any similar openings projecting over adjoining property, unless there is a distance of at least 2 meters between the wall in which they are built and the adjoining property. The evidence adduced during the trial in the court below was not brought here. Therefore, we are governed as to the facts by the findings of the lower court. The lower court found that the distance between the wall of the house of the defendant and the dividing line between the two lots was only 71 centimeters. The defendant, therefore, has violated the provisions of said article 582 by building his house nearer the line of the property of the plaintiff than a distance of 2 meters.

Said article 581 provides the character of windows or openings in a wall adjoining the property of another when such wall is constructed nearer the dividing line of the two properties than 2 meters. In the present case the

defendant constructed his house so that the wall looking upon the property of the plaintiff was less than 2 meters from the dividing line. He can, therefore, only construct such windows as are provided for in said article 581.

The lower court bases his conclusions largely upon the fact that the plaintiff had stood by and permitted the defendant to construct, or partially construct, his house without having made any objections, as well as the further fact that the plaintiff had received no damages whatever except purely sentimental damages. The first ground would seem to imply that the lower court was of the opinion that the plaintiff was estopped from insisting upon his rights under the law, he having permitted the defendant to partially construct the house in the manner above described. There is nothing in the decision of the lower court which shows that the plaintiff at any time before the commencement of the present action knew that the house of the defendant was being constructed in violation of the provisions of said above-quoted articles. It was the duty of the defendant to construct his house in accordance with the provisions of the law. The plaintiff was not obliged to stand by for the purpose of seeing that the defendant had not violated the law. There are many cases where the doctrine of estoppel may be invoked against one who claims a right where he has stood by and either expressly or tacitly given his consent to a violation of his right by another. This doctrine, however, can not be invoked where the law imposes an express duty upon the other person and prohibits him from the exercise of certain acts in a certain way. The defendant only can blame himself for not constructing his house in the manner provided for by law under the facts in the present case. (See decision of the supreme court of Spain, June 6, 1892; 4 Manresa, 734, 735, 736-739; 9 Alcobilla, 541.)

Under all of the facts and the law presented in the present case, we are of the opinion, and so hold, that the defendant is not entitled to the easement of light and view which the windows and openings, which he has made in the house in question, give him, and, because of the fact that he has constructed his house nearer than 2 meters to the dividing line between his property and the property of the plaintiff, he is only entitled to the easement of light and view provided for in said article 581 above quoted. Therefore, let a judgment be entered reversing the judgment of the lower court with costs, and directing the defendants, within a period of thirty days from the receipt of the notice of this decision, to close the said openings and windows, in the said house, looking directly upon the property of the plaintiff. So ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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