

**MIGUEL FABIE Y GUTIERREZ, PETITIONER AND APPELLEE, VS.
JULITA LICHAUCO AND THE CHILDREN OF FRANCISCO L. ROXAS,
RESPONDENTS AND APPELLANTS.***G.R. No. 3598. July 24, 1908*

Ponente: MAPA, J.

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This is an appeal from a judgment of the Court of Land Registration. The petitioner applied for the registration his property, situated at 22 Calle San Jacinto, district of Binondo, Manila, free from all incumbrances, with the exception of an easement of right of way which he recognizes as existing in favor of the estates of the respondents Lichauco and Hijos de Roxas, which adjoin the property of the petitioner on the right and left of its entrance, respectively. In addition to the said easement of right of way the respondents claim that of light, view, and drainage in favor of their respective properties; said claim was modified in part during the course of the litigation as far as it referred to Julita Lichauco, who finally, reduced her opposition (fol. 138) to the easement of right of way and of light and view.

In the judgment appealed from it is held that the easement of right of way exists in favor of the respective properties of Julita Lichauco and Hijos de Roxas, and the latter are further entitled to the easement of drainage. The claim of both respondents as to other easements was dismissed.

(a) Opposition made by Julita Lichauco. This opponent invokes as the only legal foundation for her claim the provisions of article 541 of the Civil Code. The language of said provision is as follows:

"The existence of an apparent sign of an easement between two estates established by the owner of both shall be considered, should one of them be alienated, as a title, in order that the easement may continue actively and passively, unless, at the time of the division of the ownership of both estates, the contrary should be expressed in the instrument of alienation of either of them, or if said sign is removed before the execution of the instrument."

It is alleged by Lichauco, as a material fact for applying the above legal provision, that her property, as well as that of the petitioner, came from Juan Bautista Santa Coloma, the original owner of both estates, who, at the time of constructing them, established upon the latter estate, not only an easement of right of way, which the petitioner admits, but also the easement of light and view which she claims; and that when both properties were alienated, that of the petitioner on the 28th of November, 1848, and that of the respondent (Julita Lichauco) on, the 31st of October of the same year, the apparent sign of the existence of said easement was not removed, nor was it expressed in the instrument of alienation of the estates that such easements should be abolished.

The apparent sign of the easements claimed in this case is made to consist of a gallery with windows through which light is admitted. In her written opposition Lichauco states that the said gallery is supported on columns erected on the ground belonging to the petitioner, and on the first page of her brief submitted to this court she again states that the balcony of her building is supported by uprights erected on land owned by the petitioner.

The parties to the suit having admitted the actual existence of the aforesaid gallery, the question now to be decided is whether or not it existed when the ownership of the two estates of Juan Bautista Santa Coloma was divided by the alienation of the one which now belongs to the respondent (Lichauco) and which was the first sold on October 31, 1848.

The instrument of sale (fol. 78) presented by said respondent contains a description of said house such as it was at that time, and after setting forth the boundaries thereof, states that the house is built of stone and mortar, and that it is erected upon the lot of the owner, and has a frontage of twenty and one-fourth varas and three and a half inches, with a depth of thirty-one and one-fourth varas. Converting the varas into meters and disregarding the centimeters, it results that said house had a frontage of 16 meters, equivalent to the twenty and one-fourth varas and three and a half inches stated in the instrument when it was alienated for the first time in October, 1848. Twenty years thereafter—that is, on the 13th of September, 1869—the house was surveyed and appraised by Architect Luciano Oliver at the request of the person who then owned it, and in the certificate issued by the said architect (fol. 94) it is set forth that the house measures 16 meters on the front facing Calle San Jacinto which confirms and corroborates the measurement stated in the aforesaid instrument. Now then, according to the plan on folio 137, Exhibit I of the respondent (Lichanco), the house has now a frontage of 18 meters and 60 centimeters, of which 16 meters and 60 centimeters correspond to the main part of the same, and 1 meter and 90 centimeters to the gallery in question. It results, therefore, that at the present day, the house has nearly 2 meters more frontage than when it was alienated by Santa Coloma, the original owner thereof, or rather by the executors of his estate on the 31st of October, 1848.

According to this it is evident that the front line of the house was increased by about 2 meters after the same was sold by Santa Coloma, and it also seems clear to us that it is the gallery mentioned above which constitutes the increase, both because it measures 1 meter and 90 centimeters, which, with a difference of a few centimeters, exactly represents such excess, and because it has neither been alleged nor claimed by the said respondent, that the rest which forms the main part of the house has suffered any alteration in its frontage since the year 1848.

There is furthermore another detail in support of said conclusion. As stated by the respondent, the gallery is supported by columns erected on the lot of the petitioner, so that it is not merely a body projecting over the said lot without materially resting thereon but a construction erected and having foundations in the lot of the petitioner, inasmuch as the columns that support the said gallery are planted therein. Therefore, at the present day the house is erected partly on land belonging to the owner and partly, the gallery, over a lot belonging to another; that is, over that of the petitioner. When it was sold in October, 1848, no portion of the house occupied the lot last mentioned, but the entire building was erected over a lot belonging to the owner as set forth in the instrument of sale.

To the foregoing considerations the following may be added in conclusion: In view of the fact that the two buildings—namely, that of the petitioner and that of the respondent—originally belonged to the same owner, and on the supposition that the gallery did already exist and that, as stated, it is supported on columns erected in the lot now owned by the petitioner, it is not an easy matter to explain how it was that when the ownership of the two properties was separated the house of the respondent, of which the said gallery forms a part, was sold to one person while the lot over which said gallery is erected or in which its columns are embedded was sold to a different person. It would be a logical and natural thing to suppose that in the sale of the gallery the land occupied by the same would have been included in order to avoid the division of the ownership of the ground and the superficies, that is, the lot and that which is erected upon it. The necessity for such division does not appear nor can any reasonable justification therefor be discovered in, the present case.

On the other hand, in none of the numerous papers presented by the respondent is there any mention made of the

gallery in question, notwithstanding the fact that in some of them the house of the respondent (Lichauco) is minutely described. And it does not seem that this is due to mere carelessness or inadvertence, or that it was considered unnecessary to mention said gallery, inasmuch as a deliberate, careful, and repeated mention is made of the other gallery on the side of the house facing the street, as may be seen from several of the other documents above alluded to, among which are the certificate issued by Architect Luciano Oliver on September 13, 1869, (fol. .94), the instrument of sale executed in favor of Manuel Gonzalez Junquito (fol. 104), and the mortgage deed of the same date in favor of the Obras Pias (fol. 116). In each of the said documents the statement is made that the house has a corridor supported on columns on Calle San Jacinto, while nothing is said, even incidentally, regarding the other corridor or gallery that now exists over the lot of the petitioner. In our opinion there is no reason why in the description of the house, as made by various persons at different times, mention should always have been made of only one of the galleries, the other being entirely ignored, if both had really existed on the respective dates of the documents above referred to.

And it is useless to say, as argued by the respondent in her brief, that Architect Oliver's certificate, from which the description made in the subsequent documents was taken, contained but a superficial description of the property without details of its four sides. For said reason she states that the fact that no mention is made of the balcony or gallery in question is of no importance, as the said certificate deals with the value of the property only, it being well known that such a work is performed taking into account all the details and circumstances which may increase or decrease the value of the same. Hence, the respondent goes on to say, that mention was made, by said architect, of the veranda facing the street for the purpose of distinguishing between the one built on private land and the one which was built over land belonging to the city. For the very same reason she should have mentioned also the veranda built over the lot of the petitioner, if it had been in existence, especially as the value of a property erected on land belonging to the owner is not the same as that which is constructed on land owned by another person. The omission of this detail in such a document wherein in order to omit nothing mention is even made of a well and stable both of which are unimportant portions of a building; such an omission, we say added to the reasons given above, induces us to come to the conclusion, as a result of the documentary evidence adduced at the trial, that the gallery in question did not exist at the time when the house of the respondent was alienated by its original owner, Santa Coloma, in October, 1848.

This conclusion is not weakened by the expert testimony offered by the respondent, the only testimony which she introduced aside from the documentary evidence already mentioned. As the judgment appealed from properly states, even if the forty or fifty years of existence of the house referred to, according to the unanimous reckoning of the experts offered by said party is accepted, yet, we do not reach the year 1848, more than fifty-seven years back, when the separation of the ownership of said house and that of the petitioner took place; such date constitutes the essential and culminating point of the question. Moreover, it does not appear that said experts, who, among other things, base their opinion on the condition of the building and its materials, have made a careful and sufficient examination and survey of the latter. This is evidenced by the fact that one of them, Enrique Lafuente, states, on folio 146, that the columns which support the gallery facing the street are built of stone, and that those of the other gallery over the lot of the petitioner are of wood; while according to another, Ramon Herrera Davila, (fol. 152) both sets of columns are built of stone, and the third, Jose Perez Siguenza (fol. 157), affirms that they are all built of wood, those facing the street as well as those embedded in the land of the petitioner.

Furthermore, all the experts discuss and reason, and render their opinion as if the house was in the same condition as when sold by Santa Coloma in 1848, when it seems certain and unquestionable that long after the said year it underwent, or must have undergone, very important repairs of an essential nature. This is shown by the letter written by Manuel Gonzalez Junquito, who owned it at the time, to his attorney in fact under date of March 25,

1889, and was incorporated in the instrument of sale executed by said attorney in fact of the owner in favor of the respondent. In said letter Junquito states that the house was converted into a heap of ruins, and that (undoubtedly for the said reason) during three years it had not yielded him a single cent; for this reason he prayed his said attorney to see the way to sell it by all means at the best price obtainable * * *. It was thus that the said house which, as stated by Junquito in the same letter, had cost him 15,000 pesos was sold to the respondent for only 8,000. If in 1889 the house was a heap of ruins, it seems to us too hazardous to certify solely in view of its present condition, after undergoing repairs or having been practically rebuilt, the real condition in which it was in 1848—that is, forty years before it became ruined—especially since, as the petitioner's expert properly states, in the repair or rebuilding of the property old or used materials may have been employed which would give it the appearance of being older than it actually is.

The respondent states in her brief, as though intending to prove the great antiquity of the gallery in question, that, notwithstanding the fact that the petitioner acquired his property before she acquired the adjoining building, he has not been able to testify that the said gallery was built by Julita Lichauco or by her predecessor after he had purchased his property, nor has it been proven that since that time or at any time previous thereto there had been any disagreement between the owners of the two properties on account of the gallery in question. Such allegation absolutely lacks foundation, (1) because it is not true that the petitioner acquired his property prior to the time when Julita Lichauco acquired hers, but entirely on the contrary since the petitioner purchased his property on the 9th of May, 1894, and the respondent acquired hers on the 25th of October, 1889, that is, five years previously; and (2) because the burden is not on the petitioner to prove at what time the gallery in controversy was constructed inasmuch as he limits himself to sustaining and defending the freedom of his property, denying the easements of light and view that the respondent pretends to impose over it. It is a settled doctrine of law that a property is assumed to be free from all incumbrance unless the contrary is proved. (Decisions of the supreme court of Spain of April 7, 1864, and December 13, 1805.) The respondent who claims the said easements, basing her claim on the provisions of article 541 of the Civil Code, is obliged to prove that the aforementioned gallery, in which the apparent sign of the easement is made to consist in the present case, existed at the time the ownership of her property and that of the petitioner were separated, in October, 1848. And inasmuch as this issue has not been proved, the claim of the respondent as to the easements of light and view, which the petitioner does not admit, must of necessity be dismissed.

(b) Opposition of the heirs of Francisco L. Roxas. The real terms of this opposition do not appear well defined. As the Court of Land Registration says in the judgment appealed from, when this party appeared at the trial it stated (fol. 71) that it had no opposition to offer and only desired that the matter of the easement of right of way, acknowledged by the petitioner, be clearly established, and that the other rights of easement which their property holds over the former be respected, not specifying, however, either at the time or during the course of the proceedings as to which of said easements they referred when appearing. Hence the questions raised by these respondents do not appear as clearly determined.

In the absence of due specification of the said points, and inferring it only from the language of the agreement submitted by the parties to the suit, the Court of Land Registration assumed that beyond the acknowledged easement of the right of way, the respondents claimed those of light, view, and drainage, and on such supposition entered judgment in connection with said easements only. Upon moving for a new hearing the respondent alleged as a foundation therefor, as stated in the overruling thereof (p. 9 of the bill of exceptions), that the easement with reference to balconies had not been acknowledged, and now; in setting forth their injuries before this court they speak of the eaves * * *.

Admitting, for the sake of argument, that all of the above questions were duly set up and discussed in the court

below, the fact is that in the judgment appealed from no other easements than those with reference to right of way and drainage from the roof have been allowed in favor of the property of the respondents; therefore, the easements of light, view, and balconies remain in dispute in the present instance. The easement with reference to eaves mentioned also in the brief of the respondents should, in our opinion, be discarded inasmuch as it is included in this case in the easement of drainage from the roof acknowledged in the judgment appealed from. (P. 7 of the bill of exceptions.)

The Court of Land Registration in order to dismiss the opposition with reference to the easement of light and view bases its decision on the fact that, the same being negative, according to article 533 of the Civil Code, because the owner of the servient estate is prohibited to do something which he could lawfully do if the easement did not exist, the time of possession for prescription (and it is a matter of prescription for the reason that the respondents hold no title) should begin to run, not from the date of the existence of the windows or balconies, but from the day when the owner of the dominant estate, by means of a formal act, might have prohibited the owner of the servient estate to do something which he could properly execute if the easement did not exist; this was never carried out by the opponents or by their principals as agreed to by the parties at the hearing.

In rebuttal of this portion of the judgment the respondents state in their brief as follows:

"We agree with the trial court that as a general rule the easement with reference to view is a negative one ***; but we understand that there are cases in which the easement is positive because it imposes on the owner Of the servient estate the obligation to allow the owner of the dominant estate to do on the property of the former something which the latter could not lawfully do if the easement did not exist, * * * such as happens in the present case in which the windows have a balcony projecting over the lot of the petitioner. In the case at bar there exists the positive fact of windows with projecting balconies opening over the land of the servient estate which is not a right inherent to the dominion of the owner of the dominant estate, but a real invasion of the right of another, a positive act which limits the dominion of the owner of the servient estate which, constituting an easement, imposes on him the obligation to permit the owner of the dominant estate to have such windows with balconies projecting over his estate."

According to this no question is raised by the respondents as to the legal nature of the easement of view (in their brief the easement of light is ignored) which they acknowledge for the reason that, in general, it is a negative one although in their opinion there are exceptions where it acquires the nature of a positive easement, among them, when as in the present case, view is obtained by means of windows with balconies projecting over the adjoining estate. On page 4 of their brief they state that the latter fact was agreed to by the parties, which is tacitly contradicted by the petitioner when denying, on page 14 of his brief, that the word balconies was used in the agreement as synonymous with projecting windows and differing from windows, for although, according to the said agreement, they overlook the lot of the petitioner, they are not, however, over the same, nor is the contrary claimed in connection therewith by the representative of the respondents.

In reference to the above question the said agreement of facts reads as follows:

"(1) That house No. 114, Calle San Jacinto, district of Binondo, this city, owned by the children of Francisco L. Roxas, adjoining the property of the petitioner, underwent alterations in the early part of the year 1882, and ever since that time it exists as it appears now with windows and views overlooking the lot of the petitioner, with balconies and eaves from which rainfall drops on the aforesaid lot."

It seems evident under the terms of this agreement, that the house of the respondents has balconies, it being immaterial for our point of view that the word balconies be taken as synonymous with windows or projections, since whether it be the one or the other the truth is that the agreement does not state that such balconies are over the lot of the petitioner or overlooking it, as claimed by the respondents. Neither would this follow from the mere

fact that the said balconies jut out, because the projecting parts of a building may be constructed, and as a matter of fact they are generally constructed, over the area of their own ground without invading the limits of the adjoining land. What actually falls over the estate of the petitioner according to the agreement is the water dropping from the projecting eaves of the respondents' house, which is precisely the fact that has originated the easement of drainage from the roof acknowledged in favor of said house; projecting eaves, thus the agreement reads, from which part of its water falls on said lot. Notwithstanding the fact that the word eaves, in the language of the agreement, is preceded by the word balconies, upon both being united by the copulative conjunction and, it becomes evident that the words in italics do not refer nor could they refer to the balconies for the simple reason that their object is not to shed the water, a thing which, on the contrary, is done by the eaves.

And that it is the water and not the balconies of the house of the respondents which falls over or overlooks the lot of the petitioner, is further evidenced by the language of the other clauses of the agreement in which the ideas are expressed with precision, from which it may be seen that the preposition over is always in relation to the fall of the water and not to the balconies. Thus, for example, clause 2 reads "that it does not appear if the construction of said windows, balconies, and projecting eaves, as well as that part of the water from the roof of the said house, fall on the lot now owned by Don Miguel Fabie * * *." . And this very same thing is twice repeated in clause 3, "that on the part of the children of Francisco L. Roxas there has not been an act of opposition to prevent Miguel Fabie * * * work that may obstruct the light, remove the windows or balconies and projecting eaves of the said house which now belongs to the children of Francisco L. Roxas, or prevent a portion of the water from the roof of the same from falling on the lot of Miguel Fabie * * *, neither has there been on the part of the said Fabie * * * any act to obstruct said light or windows, preventing the continuance of the balconies and projecting eaves, or that part of the water from the roof of the house falling * * * on his lot"

Therefore, it does not appear from the agreement, which is the only evidence we have before us, no other having been offered at the hearing, that the house of the respondents has balconies over the land of the petitioner; and as it is, since it has not been positively shown that the said balconies exceed the limit of the lot owned by the former, nor less that they invade the atmospheric area of the lot belonging to the latter, it follows that, even in accordance with the theory maintained by the respondents with which, on account of its lack of basis, we consider it unnecessary to deal herein as to its other aspect, the easement of view, which might result in such case from the existence of the balconies alluded to, would be negative and not a positive one, because the erection of the same would not constitute, according to their own statement, an invasion of the right of another, but the lawful exercise of the right inherent to the dominion of the respondents to construct within their own lot. And as said easement is negative, it can not have been prescribed in favor of the property of the respondents in the absence of any act of opposition, according to the agreement, by which they or their principals would have prohibited the petitioner or his principals to do any work which might obstruct the balconies in question, inasmuch as said act of opposition is what constitutes the necessary and indispensable point of departure for computing the time required by law for the prescription of negative easements. (Art. 538, Civil Code.)

After the foregoing it is not necessary to say anything further to show the impropriety of the claim of the respondents in connection with the other easement of balconies (*projiciendi*). They claim this easement on the supposition that the balconies of their house are or look over the lot of the petitioner; therefore, considering that this fact has not been proven, as shown heretofore, said pretension fails and can not prosper in any way. It is unnecessary to discuss the questions of law to which said fact might give rise had it been duly proven at the hearing.

For the reason above set forth, the judgment appealed from is affirmed in all its parts with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Torres, Carson, Willard, and Tracey, JJ., concur.

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