

**JUSTO SIPING, REPRESENTING HIS WIFE, FAUSTINA ELEFANTE,
PLAINTIFF AND APPELLEE, VS. ANGEL CACOB, DEFENDANT AND
APPELLANT.**

G. R. No. 4225. April 01, 1908

Ponente: CARSON, J.

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CARSON, J.:

Plaintiff alleges that some time in the month of August, 1906, the defendant erected a fence on the land of his wife, Faustina Elefante; that this fence which defendant claims to have erected on the boundary line between his land and the land of Faustina Elefante is in fact 1 meter and 20 centimeters in advance of the true boundary line; and that the defendant has thus appropriated a strip of land, the property of Faustina Elefante, 67 meters long and 1 meter and 20 centimeters wide.

The only question at issue was the true location of the boundary line, and after the testimony had been submitted plaintiff and defendant entered into the following stipulation in open court:

"To-day, April 10, 1907, counsel having submitted an oral argument, thereupon agreed that judgment should be entered in this case as follows:

"The plaintiff and defendant, respectively, nominate Marcelino Siping, justice of the peace, and Pedro Directo, municipal president, both of the town of Santiago, with authority to proceed to the land in question, accompanied or unaccompanied by the parties interested, as they shall desire, and measure 50 meters from the northeast corner of the land purchased by Angel Cacob from Juan Ellazar in the direction of the northwest corner of the said land and 33 meters from the southeast corner in the direction of the southwest corner of the said land; after having made these measurements they shall draw a straight line from the point at the end of the 33-meter measurement to the point at the end of the 50-meter measurement. If it result from this measurement that the 50 and the 33 meter lines drawn from the northeast and southeast corners, respectively, do not reach the northwest and southwest corners of the land, or, in other words, the fence between the lands of Elefante and Angel Cacob, so that the said fence does not run with and over the line which they shall draw from the terminating point of the 33-meter line and the terminating point of the 50-meter line, then the difference¹ shall be adjudged in favor of Elefante and against Cacob, who will pay all damages and costs. But, in the contrary case—that is to say, if the said measurements from the said points reach as far as the said corners, so that the line drawn by the commissioners runs with the said fence between the said lands—then judgment shall be rendered against Elefante, who shall pay the damages and costs.

"Both parties hereby bind themselves to submit without recourse of any kind to the report of the commission, and, in case of disagreement between the commissioners thus appointed, the difference shall be determined by a third commissioner to be appointed by the court.

"A. M. JIMENEZ.

"SOTERO SERRANO.

"Certified :

"SIMEON RAMOS, CLERK."

The commissioners thus appointed submitted the following report:

"REPORT OF THE COMMISSIONERS.

"SANTIAGO, May 3, 1907.

"To the Clerk of the Court of First Instance of Ilocos Sur.

"SIR; The undersigned, Marcel carried out their instructions, and report as follows:

"First. That from the northeast corner of the land purchased by Angel Cacob from Juan Ellazar in the direction of the northwest corner, drawing a straight line from the northeast to the northwest from fence to fence, measures only 48 meters and 85 centimeters, and from the southeast angle of the said land toward the southwest angle, drawing a straight line from fence to fence, measures 31 meters and 63 centimeters. (The meter used in this measurement is the official meter from the municipal government building.)

"Second. The vendor, Juan Ellazar, original owner of the land, being present when the measurements were made, stated that the true boundary line of the said land toward the north, setting out from the northeast corner at a distance of 1 meter and 85 centimeters to the east of the fence, to the northwest corner at a distance of 4 meters to the east of the fence, runs in a curved line which was designated at the request of Justo Siping; the measurement making use of the meter used by the vendor at the time of the sale of the land gives 54 meters and 10 centimeters on the northern and 33 meters and 75 centimeters on the southern side from the southeast to the southwest corner.

"Third. The purchaser, Angel Cacob, objected to the use of the meter submitted by the vendor, Juan Ellazar, stating that it was not the true meter used when Ellazar sold the said land to the purchaser; he said, furthermore, that the meter used by the commissioners in case 1 is the same as the meter measure preserved by the purchaser since the time when he bought the land.

"This is all which, in honor of truth, your commissioners have to report.

"Respectfully, MARCELIXO SIPING,

"Justice of the Peace.

"I do not approve of No. 2, because the meter used is too short and is illegal.

"PEDRO E. DIRECTO,

"Municipal President."

It will be seen at once that paragraph one of the report, which is signed by both commissioners, shows that the fence erected by the defendant stands well within the line which counsel agreed to recognize as the true boundary line, and that under the terms of the agreement the fence of the defendant, instead of being advanced over the true boundary line as found by the commissioners, is several meters back of that line.

Upon this report, it was the duty of the trial court to enter judgment in favor of the defendant for the costs, in accordance with the solemn stipulation entered into by the parties in open court. (Sec. 134, Code of Civil Procedure.)

The trial court, without any reason which appears of record, wholly disregarded the stipulation of the parties, and rendered judgment in favor of the plaintiff upon the pleadings and the evidence. The judge appears to have been of opinion that the report of the commissioners was not final, and that he was authorized, to accept it or reject it in whole or in part as though it were a report of commissioners appointed in partition proceedings (sec. 189, Act No.

190) or of a referee commissioned under the provisions of section 136, Act No. 190. It is to be observed, however, that the first paragraph of the report merely sets out a fact which the parties expressly stipulated should be taken by the court to be true, and that the so-called commissioners were in no sense commissioners of the court; they were merely private persons whom the parties employed to ascertain a fact according to a prescribed proceeding, which fact, thus ascertained, the parties agreed to accept as one of the facts upon which the judgment was to be based.

Of course, so much of the report of the commissioners as is found in sections 2 and 3 thereof must be wholly disregarded as in no wise responsive to the commission given them by the parties, who bound themselves merely by results obtained in conformity with the instructions contained in the agreement appointing the commissioners; and indeed one of the commissioners expressly and properly objected to the insertion of section 2 in the report.

It may be well to point out that, in accordance with the terms of the stipulation, while the plaintiff would have been entitled to judgment for possession in the event that, upon the facts reported by the commissioners, it appeared that the defendant had encroached upon his land, nevertheless there is no provision in the agreement authorizing the entry of judgment in favor of the defendant for the land to which he would appear to be entitled, if the boundary line located according to the method agreed upon by the parties in the above set-out stipulation is in fact the true boundary line.

There is no evidence upon which to base a judgment for damages in favor of the defendant.

The judgment of the trial court is reversed without costs to either party in this instance. After twenty days judgment will be entered in favor of the defendant for the costs in the trial court. So ordered.

Arellano, C. J., Torres and Mapa, JJ., concur.

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