

VICENTA FABIE Y GUTIERREZ ET AL., PETITIONERS AND APPELLEES, VS. THE CITY OF MANILA, RESPONDENT AND APPELLANT.

G.R. No. 4273. January 30, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

This case comes from the Court of Land Registration. The city of Manila opposed the granting of the petition for registration on the ground that the petitioners had included in their plan, upon the south side of one of the parcels indicated therein, an estero or waterway which was of public use, and it asked that this waterway be excluded from the petition.

The court below decided that the estero was a waterway devoted to public use from its mouth, at point "L," to the point marked "J" on the plan, a distance, as we understand the plan, of more than 120 meters. As to the remaining part, it held that it was an artificial and not a natural waterway, laid out at the cost and by the order of the petitioners for the benefit of their property. From the judgment rendered in accordance with these views the city appealed.

There was evidence tending to support the view taken by the court below as to the artificial character of a part of the estero. This evidence was not overcome by that introduced by the city. It presented only two witnesses. One of them, an assistant engineer, testified that the estero was 6 meters wide at the widest part, without indicating whether this was in that part of the estero which the court called the natural waterway, or the other part, nor does the rest of his evidence indicate to what part of the estero he refers. The other witness testified that he had entered the estero by a canoe and had penetrated to the distance of some 40 or 50 meters, and afterwards returned because he was convinced from the construction of the estero that it had no outlet. It will be seen that he, therefore, did not reach the point "J," and did not pass out of that part of the estero which the court conceded to the city.

The appellant claims further that a plan presented by the petitioners, made in 1902, shows upon its face an estero upon the south side of the land in controversy, and that the document marked "Exhibit Q," which contains a description of the land found in the plan, indicates that the south boundary line is an estero. This description, as the appellant itself says, in its brief, is very confused, but waiving that point, the effect of this plan and document as an ordinary admission against the petitioners is not sufficient to overcome the proof offered at the trial.

It is claimed, moreover, that the petitioners having caused this plan to be made, and the deed, with the description above mentioned, recorded, they are now estopped from saying that there is not a natural water course upon the south boundary of their land, the city citing in support of its contention section 333 of the Code of Civil Procedure. This section, is in no way applicable to the case. There is no evidence to show that the city authorities ever saw this plan or this deed, and no evidence to show that they ever, in reliance upon it, took any action in connection with the estero. It was said in the case of *Trinidad vs. Ricafort* (7 Phil. Rep., 449, 453) that—

"* * * In order to create an estoppel it is necessary to prove not only the conduct of the person sought to be

estopped but also that the person claiming the estoppel knew of such conduct and relied and acted upon it to his damage."

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

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