

WILLIAM A. KEAY, REPRESENTING THE HEIRS OF CHARLES A. CROSS, PETITIONER AND APPELLEE, VS. MARIA GAY, RESPONDENT AND APPELLANT.

G.R. No. 4293. March 21, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

LAND REGISTRATION; BOUNDARIES.—From the Court of Land Registration. The only question involved was, Which of the two channels forming the estero Panoolan constituted the boundary between the haciendas of the parties. Held, That the preponderance of evidence supported the finding of the lower court as to the true location of the channel. Judgment for the petitioner affirmed.

Per Willard, J.

For appellant: Carlos Ledesma, and Ramon Fernandez.

For appellee: Rosado, Sanz & Opisso.

DECISION

This case comes from the Court of Land Registration. The petitioner asked to have the hacienda of Santa Cruz inscribed in the name of the heirs of Charles B. Cross. Doña Maria Gay, the owner of the hacienda "Fortuna" which bounds the hacienda of Santa Cruz on the south, appeared and opposed the petition. Judgment was entered in favor of the petitioner and Doña Maria Gay has appealed.

The appellant's only assignment of error is the following:

"El Tribunal del Registro de la Propiedad cometio error al declarar que el estero o rio Panoolan que sirve de limite entre las haciendas "Santa Cruz" y "Fortuna", sea el designado en el plano del solicitante y no el indicado con lapiz azul en el plano por el testigo F. Eugenio Lopez."

The question presented by this assignment is on of fact. It is admitted that the boundary between the two estates is the river Panoolan and the question is, where is that river? The case was referred to a commissioner to hear the evidence and report his conclusions thereon. In his report he made the following findings:

"4.o Que en este sitio hay dos esteros, uno hacia el Norte de la hacienda "Santa Cruz" y dentro de ella, al lado de un pono de caña espina, que no tiene agua durante la epoca de secas y orta hacia el Sur de la misma hacienda que tiene agua en todas la epocas del año, que el primero no tiende nombre conocido y el segundo se llama "Panoolan".

"5.o Que en este sitio hay dos esteros, uno hacia el Norte de la hacienda "Santa Cruz" y dentro de ella, al lado de un pono de caña espina, que no tiende agua durante la epoca de secas y otra hacia el Sur de la misma hacienda que tiene agua en todas la epocas del año, que el primero no tiende nombre conocido y el segundo se llama "Panoolan".

6.o Que por la conformidad de las declaraciones de los testgos respecto a la denominacion de los dos esteros o riachuelos, asi como que uno de ellos tiene agua constantemente aun en la epoca de secas y el otro solo en la de aguas, se puede concluir sin temor a equivocarse que aquel y no este es el verdadero riachuelo "Panoolan".

His findings in this respect were affirmed by the Court of Land Registration and in our opinion they are supported by a great preponderance of the evidence.

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

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