

**SIMEON ALCONABA ET AL., PLAINTIFFS AND APPELLANTS, VS.
MAGNO ABINEZ, DEFENDANT AND APPELLEE.***G.R. No. 4384. August 27, 1908*

Ponente: TRACEY, J.

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Lucas Alconaba formerly owned a house in Borongan, Samar, which was destroyed by an order of the local government authorities in the year 1885, for the reason that it stood upon the public street. It appears to have been of the depth of 5 brazas, and the entire lot occupied in connection therewith to have had a depth of 8 brazas, which left in the neighborhood of 3 brazas of land adjoining the street on the east, apparently the property of Lucas. The plaintiffs, his heirs, bring this action to recover his lot, or so much thereof as remains, from the defendant, the owner of the adjoining property on the eastward who, in 1905, included it with his property, placing a house upon it. The evidence is conflicting as to what was done with the remnant of Lucas's land in the intervening years, the plaintiffs testifying that they had fenced it and kept it clean, while the defendant claims that it had been unoccupied and had been abandoned by the former owner.

Whatever the plaintiffs may have done on the land in question after the death of their father, it is clear from the evidence that he, in his lifetime, made no further claim to it. On the contrary, in 1891, when Juan Florentino Abinez, the father of the defendant, was buying the adjoining property, a survey was made of it under the direction of Lucas Alconaba as first judge, who, together with the second judge, measured the land, while the clerk made the plan of it by their direction. This plan shows that it extends from the land of Juan Veros in a westerly direction a distance of 26 varas and 1 palmo to the street, thus including the remnant of Lucas's land. Not only did he take part in this survey, but as a witness he signed the document transferring the title from the former owners to Abinez. This action is entirely inconsistent with any claim on his part to a portion of the land thus described and conveyed and more than counterbalances the uncertain evidence of the plaintiffs as to their continuous claim and occupation of the property sued for.

Even in relation to real estate, similar action, amounting to a disavowal of a claim on which the other party relied and on the faith of which he incurred expense, has been in some jurisdictions held sufficient to constitute a strict estoppel.

The judgment of the Court of First Instance is affirmed, with costs of this instance against the appellants. So ordered.

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

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