

**THE INSULAR GOVERNMENT, PLAINTIFF AND APPELLEE, VS.
ALDECOA AND COMPANY, DEFENDANT AND APPELLANT.***G.R. No. 6098. August 12, 1911*

Ponente: TORRES, J.

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On April 20, 1907, the Attorney-General filed a written complaint in the Court of First Instance of Surigao against the Arm of Aldecoa & Co., alleging that the defendant, a mercantile co-partnership company organized under the laws in force in these Islands and domiciled in this city of Manila with a branch office in Surigao, continues to operate as such mercantile copartnership company under the name of Aldecoa & Co.; that the said defendant, knowing that it had no title or right whatever to two adjoining parcels of land, which belong to the domain of the Government of the United States and were placed under the administration and control of the Government of these Islands, has been occupying them illegally for the past seventeen years, more or less, having constructed on the land a wharf, located along the railroad, and built warehouses of light material for the storage of coal - all for its exclusive use and benefit; that of the said two parcels of land, the parcel B has an area of 11 centares, approximately, and the parcel A, 84 centares, more or less, and their situation, metes and bounds, together with other details thereunto pertaining, are set out in the judgment of the court; that these lands, situated in Bilangbilang, in the pueblo of Surigao and the province of the same name, belonged to the late Spanish Government in the Philippines and are now the property of the Government of the United States and were placed under the control of the Insular Government, which, by virtue of the treaty of Paris, has succeeded the former in all its rights; that, since the year 1901, the defendant has been requested repeatedly by the Attorney-General, in representation of the Insular Government, to recognize the latter's right of dominion over the same and to deliver to it the said property, and that, by reason of such demands, Aldecoa & Co., on February 25, 1903, recognizing the Insular Government's ownership, agreed to return the land, but that later, after several delays, it concluded by persisting in its attempt illegally to continue occupying the said land and refused to return it to the Insular Government; wherefore the Attorney-General asked the court to enter judgment declaring the Insular Government to be the owner of the land claimed, and to order that the plaintiff be placed in possession of the same, together with the fruits collected by the defendant since it took such possession, and those awaiting collection, and to sentence the defendant to pay the costs.

Counsel for the defendant, Aldecoa & Co., in liquidation, answering the preceding complaint, set forth that it denied each and all of the allegations of the complaint, with the exception of those which it expressly admitted in its answer; and that it admitted paragraph 2 of the complaint, that is, the fact of the defendant's being a mercantile copartnership company, 'organized under the laws in force in these Islands. As a special defense, it alleged that it held and possessed, as owner, and had full and absolute dominion over, the lands claimed by the plaintiff in paragraph 1 of the complaint. The defendant therefore prayed that judgment be rendered in its favor, by absolving it from the complaint, with the costs against the plaintiff, together with the other relief solicited.

The provincial fiscal of Surigao presented a motion on November 3, 1908, for the purpose of amending the

preceding complaint, with the permission of the court, by inserting, between paragraphs 4 and 5 of the complaint, a separate paragraph, as follows: "That Aldecoa and Company's possession of the lands here in question, was in fact interrupted during the years 1900, 1901, and 1902;" but, in view of the ruling of the court by an order of November 5, 1908, directing the plaintiff, within three days to specify the facts that constituted the alleged interruption of the defendant's possession of the lands in question, the provincial fiscal presented, on the 6th of the same month, a new written motion whereby he requested permission to amend the previous complaint by inserting between the said paragraphs 4 and 5 of the original complaint, a separate, paragraph, as follows. "That the municipality of Surigao, in the year 1900, and through the mediation of Captain Kendrick, removed the posts and wire which enclosed the property here in question, the sole sign of possession that the defendant then had to the said lands." Inasmuch as no objection whatever was raised to the amendment requested, the court granted the same by an order of December 7, 1908.

The case came up for hearing on the 1st of December of that year and, after the presentation of testimony by both parties, the documents exhibited being attached to the record, the court, on December 10, 1909, rendered judgment and found that the land in question was public land and belonged to the State, and ordered the defendant to return it to the plaintiff and to pay the costs, with the proviso that the plaintiff might have the crops and the buildings on the land, upon the payment of an indemnity therefor, or might compel the defendant to pay him the value of the land, as provided by article 361 of the Civil Code. Counsel for the defendant excepted to this judgment, and by a written motion of the 4th of January asked for a rehearing of the case on the grounds that the said judgment was unwarranted by the evidence and was contrary to law. This motion was disallowed, exception thereto was taken by the appellant and, the required bill of exceptions being filed, in which was set out, at the request of the provincial fiscal, the latter's exception to the order issued by the judge on January 24, while in Cagayan, Province of Misamis, granting an extension of time for the presentation of the bill of exceptions, it was certified and transmitted to the clerk of this court.

The demand of the representative of the Government is for the recovery of possession of two united parcels of land, belonging to the public use and domain, which are at present occupied by the defendant Aldecoa & Co. The latter claims to have the full and absolute ownership of the said land and to have held it as owner since 1889, by virtue of a verbal permit from the politico-military governor of Surigao.

From the proceedings had and by the testimony of a large number of competent witnesses, one of whom was introduced by the defendant party itself, it was clearly proved that, in 1889, the land in litigation, as well as Bates Avenue, was, during the extraordinary high tides, usually covered by sea water that would extend to the other side of the said avenue, as far as the warehouse of Aldecoa & Co. that was erected there, and, at the ordinary low tides, as far as the wall built along the shore by the aforesaid firm and designated by the numbers 5, 6, and 7 in the plan, Exhibit A. This plan, according to the agreement between the parties, exactly represents the land in litigation.

It was likewise proved that nearly all the land in question was low land and swampy in certain places, with aquatic bushes growing upon it; that it had been gradually raised by the action of the sea, which in its ebb and flow left sand and other sediment on the low ground; that the retaining wall erected to prevent the sea water from reaching the said warehouse, that is on the opposite side of Bates Avenue, contributed in a large measure toward raising the level of the land; and that, furthermore, between the years 1889 and 1890, there were two piers on the said land, one belonging to the Spanish Government and the other to one named Carloto, alongside of which the vessels used to lie that called at Surigao during their voyages.

It is, then, incontrovertible that the land in question is of the public domain and belongs to the State, inasmuch as at the present time it is partly shore land and in part, was such formerly, and now is land formed by the action of the sea.

Treating of the sea coasts and shores as property of the public use and domain, partida 3, title 28, law 3, says:

"The things which belong in common to all the living creatures of this world, are: The air, rain water, the sea and its shores; for every living creature may use them, according to its needs, etc."

Law 4 of the same title and partida says, among other things:

"And by the seashore is understood all that space of ground covered by the waters of the sea, in their highest annual tides, whether in winter or summer."

The Law of Waters of August 3, 1866, extended to these Islands by the royal decree of the 8th of the same month and year and, together with the decree ordering its enforcement, issued by the Gobierno General on September 21, 1871, was published in the Official Gazette of the 24th of the same month, which law was not substituted nor repealed by that of June 13, 1879, promulgated in Spain and not extended to these Islands, provides, in article 1, that:

"The following are part of the national domain open to public use:

* * * * *

"2. The coast sea, that is, the maritime zone encircling the coasts, to the full width recognized by international law. * * *

"3. The shores. By the shore is understood that space alternately covered and uncovered by the movement of the tide. Its interior or terrestrial limit is the line reached by the highest equinoctial tides. Where the tides are not appreciable, the shore begins on the land side at the line reached by the sea during ordinary storms or tempests.

"Art. 4. Lands added to the shores by accretions and alluvium deposits caused by the action of the sea; form part of the public domain. When they are no longer washed by the waters of the sea, and are not necessary for the purposes of public utility, or for the establishment of special industries, or for the coast-guard service, the Government shall declare them to be the property of the owners of the estates adjacent thereto and as an increment thereof.

"Art, 5. Lands reclaimed from the sea in consequence of works constructed by the State, or by the provinces, pueblos, or private persons, with proper permission, shall become the property of the party constructing such works, unless otherwise provide, by the terms of the grant of authority.

"Art. 17. The use of the shores also belongs to the public under the police supervision of the civil authorities; all persons may fish thereon, wash, bathe, embark and disembark on pleasure trips, spread and dry clothes and nets, bathe cattle, remove sand, and collect stones, shells, plants, shellfish, and other products of the sea, and do other things of a like nature. These rights may be restricted by virtue of the regulations necessary for the coast defense or police supervision, or in the interest of public utility or decency.

"Art. 18. In no place on the coasts, shores, ports, or entrances of rivers, nor on the islands referred to in article 3, shall new works of any kind whatever be constructed, nor any building be erected, without proper permission, in accordance with the provisions of this law and with those of the law regarding ports."

On the supposition that Aldecoa & Co. commenced to occupy the land and shore herein concerned, prior to the enforcement of the Civil Code in these Islands, it is unquestionable that the issue pending decision must be determined in accordance with the provisions of the said Law of Waters of August 3, 1866, inasmuch as the shores, as well as the lands united thereto by the accretions and alluvium deposits produced by the action of the sea, are of the public use and domain.

Excluding the space occupied by Bates Avenue, that lies between the defendant's buildings and the shore and the lands added to the latter by the action of the sea in the sitio called Bilangbilang, all this said land, together with the adjacent shore, belongs to the public domain and is intended for public uses. So that the defendant, in constructing on the two aforementioned parcels of land a retaining wall, a pier or wharf, a railway, and warehouses for the storage of coal, for its exclusive use and benefit, did all this without due and competent authority and has been illegally occupying the land since 1889, since, as a result of demands made upon it since 1901 by the representative of the Insular Government, Aldecoa & Co., by a letter of February 25, 1903, acknowledged that the land belonged to the Government and consented to vacate it, although it afterwards persisted in its claim that it was the owner of the land and refused to vacate and place it at the disposal of the Insular Government, whose representative, in view of the defendant's changed attitude in the matter, was forced to bring this action to recover its possession.

Aldecoa & Co. endeavored to prove that the land, consisting of the two united parcels A and B, belonged to them in fee simple, on account of their having begun to occupy it through a verbal permit from the then politico-military governor of Surigao. Although the record does not show the nature of the permit obtained, yet it is inferred from the document Exhibit C I that the said permit was a verbal authorization to occupy the land on condition that the defendant should later on prepare title deeds thereto, and that this authorization was granted for the purpose of furnishing facilities to, and benefiting the merchants of Surigao, in view of the backward condition of things in those regions at that time. It is certain, however, that Aldecoa & Co. did not obtain or solicit permission from the Government to establish themselves there and erect thereon their buildings and works, nor did they endeavor to obtain any title of ownership to the said land, as one of their witnesses, Juan Y. Aldecoa, testified. Furthermore, in the said letter or document Exhibit C I, the attorney then representing the defendant prayed that in case of sale or total or partial lease thereof Aldecoa & Co. should be given preference to any other party, on account of the important improvements they had made on the land.

It is true that, notwithstanding the fact that the lands which become an adjacent part of the shores through the accretions occasioned by the action of the sea, when they are no longer covered by such waters, or are not necessary for the purposes of public utility, for the establishment of special industries, or for the coast-guard service, may be declared by the Government to be the property of the owners of the estates adjacent thereto; but the defendant has not proven that it obtained for itself, in conformity with the provisions of article 4 of the said Law of Waters, such declaration of ownership, and competent authorization obtained from the Insular Government is indispensable in order that a private person may construct works on the seashore and thereby secure lands for his profit and benefit, pursuant to article 5 of the same law, inasmuch as article 18 strictly prohibits the construction of any works or the erection of any building at any place on the coasts and shores, without proper authorization.

Aside from the verbal permission alleged, but not duly proven, and leaving aside the fact that the same is not admissible in official and administrative proceedings, it has in no wise been proved that Aldecoa & Co. obtained from the Insular Government any authorization whatever to erect a retaining wall, to construct a pier and warehouses, and to lay a railway on the land in question, which belonged to the State and was destined to public uses, as the defendant must have very well known; nor could any right whatever be created in its favor, and to the prejudice of the State, by its having filled in, without the proper permission, the aforementioned land for the purpose of raising the level thereof.

The Civil Code, which went into effect in these Islands on December 7, 1889, the twentieth day of its publication in the Gaceta de Manila of the 17th of November of the same year, confirms the provisions of the said Law of Waters, since, in its article 339, it prescribes that:

"Property of public ownership is -

"1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads, and that of a similar character."

Article 341 of the same code provides:

"Property of public ownership, when no longer devoted to general uses or to the requirements of the defense of the territory, shall become a part of the State property."

The shores and the lands reclaimed from the sea, while they continue to be devoted to public uses and no grant whatever has been made of any portion of them to private persons, remain a part of the public domain and are for public uses, and, until they are converted into patrimonial property of the State, such lands, thrown up by the action of the sea, and the shores adjacent thereto, are, not susceptible of prescription, inasmuch as, being dedicated to the public uses, they are not subject of commerce among men, in accordance with the provision of article 1936 of the Civil Code.

The occupation or material possession of any land formed upon the shore by accretions and alluvium deposits occasioned by the sea, where the occupant or possessor is a private person and holds without previous permission or authorization from the Government, granted in due form, although he may have had the intention to hold it for the purpose of making it his own, is illegal possession on his part and amounts to nothing more than a mere detainer of the land, which is out of the sphere of the commerce of men, as belonging to the public domain and being allotted to public uses and for the use of all persons who live at the place where it is situated.

The record does not disclose that Aldecoa & Co. had obtained from the Spanish Government of the Philippines the requisite authorization legally to occupy the said two parcels of land of which they now claim to be the owners; wherefore, the occupation or possession which they allege they hold is a mere detainer that can merit from the law no protection such as is afforded only to the person legally in possession.

The politico-military governor of Surigao having had no authority or power to grant the possession or ownership of the said two parcels of land, could not have authorized their occupancy under a title of ownership. At the most, he may have, as alleged, verbally authorized the defendant to construct a pier, to fill in with earth the passageway necessary to enable the same to be reached from Bates Avenue, to erect a retaining wall to prevent the sea water, which used to inundate the said avenue, from flowing inward as far as the defendant's warehouses, and to build warehouses on the high land, raised by the action of the water near the shore; but such verbal authorization, even admitting that it was actually given, and the material occupation enjoyed by the defendant during more than ten years, have not created rights such as could legitimize a detention to the prejudice of the public, and of the State which represents the community, the sole entity entitled to the use and enjoyment of the land and shore usurped, for the very reason that such shores and lands belong to the national domain, are intended for public uses and are not susceptible of prescription, as they do not pertain to the commerce of men.

The subject of this suit, as has been seen, is a tract of land that is a continuation of the shore at the sitio of Bilangbilang and was formed on that shore by alluvium deposits occasioned by the action of the waters of the sea, that is, was land reclaimed from the sea, as fully proven by the record in this case; therefore the present issue is identical with that decided in the case of *Ker & Co. vs. Cauden* (6 Phil. Rep., 732) relative to a tract of land formed by the action of the sea and which has become a part of the so-called Sangley Point, in the Province of Cavite, and consequently the findings and doctrine established in that decision are properly applicable to this action, as may be seen by a perusal of that case.

The land in question, together with the shore of which it forms a part, is not, considering its conditions, comprised

within the provisions of section 54 of Act No. 926, for the reason that it can not be deemed to be agricultural public lands, nor mangrove-swamp land, inasmuch as it is unquestionable, as the record shows it to have been proven, that the disputed property is land which was reclaimed from the sea through accretions produced by the action of the water upon a high part of the shore, and is, therefore, land intended for public uses. This classification loses none of its force from the fact that a part of the land is swampy, because this circumstance does not divest it of its true character as land gained from the sea by accretion.

Mangrove-swamp land, which is generally situated inland at a certain distance from the seashore, although it is usually inundated by the waters of the sea, especially at high tide, can not be confounded with the land formed by the action of the sea and which forms the shore line thereof; and for this reason, the decisions rendered in the cases of *Montano vs. Insular Government* (12 Phil. Rep., 572), and *Mapa vs. Insular Government* (10 Phil. Rep., 175), wherein due consideration was given to the provisions of section 54 of Act No. 926, have no application to the present action, which solely concerns land formed by the action of the sea, and the shore that is a part of it, both intended for public uses, while the references made by the appellant party apply to building lots, fisheries and nipa lands that were inundated by sea water and which, though covered with a good deal of water, could not be said to be navigable ways. The land in question, on the contrary, together with its adjacent shore, borders on water of great depth, the Pacific Ocean, for, besides the pier constructed at the place by the defendant and appellant, there were two others, and all intended for the service of the steamships that plied the high seas and were accustomed to enter the said port and there anchor alongside of these piers.

Under no consideration could the land herein concerned, together with the shore upon which it is formed, be classed as agricultural land susceptible of appropriation, and as such form the basis for the allegation of the possession of an imperfect or prescriptive title thereto, because, as aforesaid, so long as the land in litigation belongs to the national domain and is reserved for public uses, it is not capable of being appropriated by any private person, except through express authorization granted in due form by a competent authority - a requisite which the defendant and appellant was unable to prove for the purpose of legalizing his possession.

However, on the supposition that the defendant, *Aldecoa & Co.*, began to occupy the said land and shore after first obtaining verbal permission from a politico-military governor, constructing thereon a pier, warehouse, and retaining wall, it is right to hold, as did the lower court in his judgment, that it acted in good faith, and, under such a supposition, the provisions of article 361 of the Civil Code must be complied with.

For the foregoing reasons, in the course of the explanation of which the errors attributed to the judgment appealed from have been disposed of, it is our opinion that such judgment should be fully affirmed, as it is in accordance with the law. The costs shall be assessed against the appellant. So ordered.

Mapa and Johnson, JJ., concur.

Moreland and Carson, JJ., concur in the result.

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