

**RAFAEL ROMERO Y LLAMAS ET AL., PETITIONERS AND APPELLEES,
VS. THE DIRECTOR OF LANDS, OPPONENT AND APPELLANT.***G.R. No. 6346. September 01, 1911*

Ponente: TORRES, J.

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This is an appeal filed by the Attorney-General on behalf of the Government.

Rafael and Ana Romero y Llamas filed an application in the Court of Land Registration on January 25, 1906, for the registration under the new Registry Act of estates of which they are the absolute owners, situate in the territory of the pueblos of Talavera, Santo Domingo, San Jose Munoz, and San Juan de Guimba, Province of Nueva Ecija. These estates, called El Valle and Calipajan, are bounded on the north and east by Government land; on the west by the estero calle Burao, the lake of Bubu, lands of Pedro Ysconben Pablo, and Government land; and on the south by lands of Melchor Salamanca, the barrio of Catanbuan of the pueblo of Santo Domingo, the Talavera River and a branch thereof called Macandule, and by Government land. Said estates have an area of 4,711 hectares, 10 ares, and 56.62 centares, and were appraised at P55,003 in the last tax assessment. According to the best of the applicants' knowledge and belief there is no kind of lien upon the same, nor any one who has any right to participation therein, they having acquired said estates partly by purchase and partly by inheritance and with final judgment. Nevertheless, they stated that they had accepted the benefits of subsection 6, section 54, of Act No. 926; as they had possessed and cultivated the estates described for a much greater period than required by said Act, without thereby intending to admit that they acknowledged by implication that the said estates should be considered public land.

In response to the summonses issued, the Attorney-General appeared in the case on behalf of the Director of Lands, stating that legal identification was necessary for the estates named in the title deeds exhibited, with those described in the application and plan, and that if the identity of such estates was not proven, the Government was opposed to the registration sought.

In another communication the Attorney-General represented: That the tracts of land, registration whereof is sought, not included within the metes and bounds set forth in the said title deeds, belong to the Government of the United States under the control of the Insular Government, and in virtue thereof he opposed registration of the said tracts not included within the metes and bounds set forth in said title deeds, and requested that the application be denied, with costs.

After hearing the case and the evidence adduced by the applicants and the opponent, and finding that the affirmations of the applicant's witnesses were openly and directly contrary to those of the Government's witnesses with reference to the boundaries of said estates, some setting very different boundaries from those fixed by others, for the purpose of clearing up doubts, on December 19, 1906, the judge directed that a survey of the said estates of El Valle and Calipajan be made by a surveyor of the Court of Land Registration, in order to determine the boundaries set forth by the Government's witnesses and those fixed by the witnesses for the applicants, after

notice to the latter and to the other opponents who appeared, ordering that the surveyor render a report regarding the boundaries stated in the resolution; and that after a plan had been made with the details mentioned, due decision would be rendered, the hearing of the case being meanwhile suspended.

In the brief submitted after completion of the survey by the surveyor of the Court of Land Registration, the following summary appears: (1) That the boundaries indicated by the Government's witnesses, Simplicio Reyes and Agapito del Mundo, are not shown on the land by means of plain and permanent marks whereby the property can be identified, for they are merely the windings of paths, which can never be regarded as permanent points because they generally disappear the following season; (2) that the boundaries indicated by the applicants' witnesses are shown on the land by natural marks, permanent and well-defined, as stated in detail on this sheet; (3) that according to the surveyor Tecson, who approved the plan, nearly all the land was under cultivation years ago, and to this he was able to add what he saw personally when he was on the estates, because all the portions along the southern part of the road to Pangasinan, especially those indicated by red ink, are under cultivation and sown in rice, corn, sugar cane, bananas, thick bamboo, and different kinds of vegetables; that along the whole extent to right and left of the road toward the estate house from the place called Hinucay to the interior, where the barrio of Valle was located, he had seen in the fields he crossed unmistakable signs of their having been cultivated at some time, signs consisting of irrigation ditches, dikes, clusters of banana plants, and fruit trees; that when he crossed the land in the sitios of Maniquis, Panagparadajan, Tagaytay, Bayabas, Bulag, Tabaco, Mabololo, and Calavinan to reach the outer boundary of the estate he had to cross dikes and ditches and at the same time observed in different places great tracts of ground that had been plowed over, which he ascribed to abandoned cultivation; (4) that the names of the different sitios included within the boundaries indicated by the witnesses of the applicants and of the Government are shown in the plan; (5) that the parcels claimed by various private parties are those entered on the plan in red ink with the name of the claimant and the area according to scale; (6) that all the tracts designated on the plan by the word "forest" to a greater or less extent contain large trees, some of which are doubtless timber-trees.

In the hearing of the case held on February 18, 1910, in San Isidro, Nueva Ecija, an agreement was entered into between counsel for the applicants and for the opponents, excluding from the application a tract of land lying south of a line drawn on the last plan, which appears on the third sheet, indicated by the letters A and B, extending from point B in a southerly direction following the course of the Talavera River on one side, and starting from point A in a southerly direction, then extending around the whole perimeter of the plan until it reaches the said Talavera River, in which agreement were included parcels 45, 48 and 49, which were also the subject of opposition by certain private parties. Counsel for the Insular Government reserved the right of the Government to intervene with reference to the parcels of land excluded by this agreement from the application, in case the opponents had any claim to make on said parcels.

On March 10, 1910, the associate judge of the Court of Land Registration rendered a decision in the case, ordering, after a declaration of general default, adjudication and registration in the name of the applicants Rafael and Ana Romero y Llamas of all the parcels of land described in the plan prepared by the surveyor of the court, appearing at the end of sheet 3 of this record, with the exception of a tract of land in the southern part of said hacienda included between the lines indicated by pencil and by the letters A and B, the Talavera River, and the perimeter of the estate extending from point A in a southerly direction until it reaches said river, and the further exception of the parcels designated by the numbers 45, 48, and 49 in red ink. The court ordered the surveyor of the court to prepare a new technical description of the hacienda after excluding the foregoing parcels, and to determine the area of the part remaining, so that the decree duly to be issued would agree with such technical description and area. No special award of costs was made, except those incurred by the survey, which were charged to the Insular Government. The Attorney-General excepted to this decision, especially to the judgment

regarding the payment of costs incurred by the survey, and asked for a new hearing on this ground. This petition was denied by order of March 31, and excepted to by the appellant, who duly submitted the proper bill of exceptions.

In the judgment appealed from, as well as in the Attorney-General's brief, the applicants' ownership and possession of the rural estates or haciendas called El Valle and Calipajan are acknowledged in such terms that the Government's counsel does not question said applicants' rights to these estates, as he clearly demonstrates in his brief; so the question on appeal is confined to fixing the boundaries and area with relation to their title deeds and the plan of the estates prepared under judicial order by the surveyor of the Court of Land Registration. This court therefore accepts the statement of facts in said decision and holds that the same in the main is in accordance with law and the merits of the case, as will hereinafter be shown.

On the hypothesis that the applicants' right to the land in question is incontrovertible and that only its true area, with boundaries in accordance with their title deeds, remains to be determined, for the proper and equitable settlement of this controversy it must be remembered that in the 491 quinones, 12 balitas, 10 brazas and 10 cuartas, the total area of the two tracts of land ceded and awarded to Manuel Lopez y Oz, according to Exhibit C, there is not included the area of the tract located in Calipajan ceded to Estanislao Cervigon, who later conveyed his right to this tract to the same Lopez y Oz, since the deed of conveyance, Exhibit D, does not show the area of this latter estate.

Before going further, it becomes necessary to fix the extent of the measure called quinon, whereby is determined the area of the two parcels of land ceded in February, 1853, by the Junta Superior Directiva de Hacienda to the said Lopez y Oz. This is an important detail, as the only question to be decided herein is the area of the two rural estates belonging to the applicants.

After careful study of the question of the extent of a quinon, we are of the opinion that the quinon, mentioned in sheets 1 and 2 of Exhibit C is that formerly well-known in this country as the quinon realengo, equivalent to 5 hectares, 77 ares, and 55 centares, and not the modern quinon of smaller extent, very little known and employed, unless so stipulated between the contracting parties, for commonly and ordinarily when no statement was made in the conveyances and other transactions the Jand measurement presumed to be adopted between the contracting parties was the quinon realengo, with its subdivisions of balitas and brazas. Such was the custom followed in this country until by superior decree of the General Government of May 8, 1861, the use of linear measurements, among them the quinon realengo, was prohibited as a result of the introduction into the Islands of the metric system, as may be seen in the note on page 365, volume 5, of the Coleccion Legislativa Ultramarina of Rodriguez San Pedro.

In the archives of the old Audiencia Territorial de Manila, which continue at the present time as the archives of this court, will be found records containing old documents and land deeds, whose measures of surface are in quinones realengos, a measure used in these Islands for many years before the year 1853. As Fray S. Martin states in his book entitled *Toblas de Reduccion*, the quinon realengo as a land measure was used in the Philippines without interruption for a period of over two hundred years, with the approval of the Real Audiencia de Manila in its decrees and judgments. It is to be noted here that in the said *Tablas de Reduccion* there are cited in support of its statements the book of Eduardo Sanchez Pita entitled *El Consultor del sistema metrico decimal*; and the opinion of an old sailor, Don Jose Antonio Vico, who is said to have been for many years superintendent of the Manila Nautical School, in so far as it asserts that for the measurement of arable lands the inhabitants of Manila take as unit the braza de ciudad or braza realenga.

On pages 143 and 144 of the first sheet appears a certificate issued by a licensed surveyor at the request of a

predecessor of the applicants on September 23, 1881, wherein, after giving the area of the estate in question and its equivalent, it is stated that it should be noted that the quinones mentioned in the said title deeds, if calculated according to the old measurement wherein the brazas used were realengas, and if they were of 23 octavo? or of three complete Burgos varas, according to the custom of each province, an increase of extent almost double would result in favor of said haciendas, which is probable, especially as the official rate of 40,000 varas to the quinon dates only from the year 1862. The licensed surveyor's statement in said certificate is not cited as an authoritative opinion in the case but only to show the measure customarily used among the inhabitants of this country up to the year 1861.

If then the area of the rural estate called Calipajan is not fixed in its old title deed, nor is included in the total of the area of the rural estate called El Valle, amounting to 492 quinones, which must according to the references given be in our opinion realengos, with 2 balitas, 10 brazas, and 10 cuartas over, equivalent, at the rate of 5 hectares, 77 ares, and 65 centares, to an extent of 2,840 hectares, it will be immediately understood how in the application for registration the area of the two estates together appears to amount to 4,711 hectares, 10 ares, and 56.62 centares, with a difference of over 1,871 hectares and a fraction, which must be the area of the Calipajan estate that the applicants have likewise continued to hold with good title.

In the plan prepared by the surveyor of the Court of Land Registration by judicial order it likewise appears that the area of the whole tract, or of the two estates together, amounts to 5,676 hectares and 98 ares, much more than the 4,711 hectares and a fraction stated in the application for registration; but this great difference is explained as resulting from the agreement entered into by the parties on February 18, 1910, before the decision in the case, whereby the applicants excluded from their application for registration the tract of land situated to the south of the estate and fixed in the articles of agreement, with reference to the said plan, and therefore counsel for the private opponents withdrew the objection they had made, thus leaving counsel for the Insular Government the only opponent in the case.

From the foregoing it appears that the case presents no question of right to be settled and that the controversy between the parties is reduced solely to the question as to whether the area indicated in the application is that which the estates called El Valle and Calipajan really ought to have, according to the boundaries fixed in the plan prepared by the court surveyor, with the exception of the large tract of land excluded in the agreement entered into between the applicants and the private opponents.

After weighing the evidence adduced in the case and considering the report of the surveyor of the court explaining the reasons and motives which, after examining the land, enabled him to fix the boundaries of the two estates, indicated in the plan prepared for that purpose, the judge held to be proved by the applicants the boundaries, extent and identity of their two estates as they are indicated in the plan prepared by said surveyor, accepting therefor the testimony of the witnesses presented by said applicants, to the effect that the boundaries indicated by them, which were admitted by said surveyor, consist of permanent marks, being for the most part very old trees. It is to be noted that, as asserted in the appellee's brief, when the surveyor proceeded to examine the land and to survey it he was accompanied by an employee of the Government and still it does not appear in the record that counsel for the Government or the Bureau of Lands has entered any statement or protest against the surveyor's action nor has it duly questioned the report made by him, or the accuracy of the plan. Therefore there appears no satisfactory reason to prevent the acceptance of the judgment formed by the court in this case.

For the rest of this case, the possession seems to be plainly justified whereby the applicants enjoy by lawful title the ownership of the two rural estates in question'; and not only is the ownership they exercise thereto proven, but said estates are also identified in due form and in accordance with the Land Registration Act.

For these reasons and in the absence of v legal obligation on the part of the Insular Government to pay all the costs incurred by the survey of the lands and preparation of the new plan by the court surveyor, it is proper in our opinion to affirm the judgment appealed from, without special award of costs in the case, each party assuming half of those incurred by the examination, survey and preparation of the new plan made by the court surveyor, to which extent the last point of said judgment is modified. So ordered.

Mapa, Johnson, Carson, and Moreland, JJ., concur.

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