

**ANIANO MAGNO ET AL., PLAINTIFFS AND APPELLEES, VS.
SERVANDO CASTRO ET AL., DEFENDANTS AND APPELLANTS.
MELCHOR FLOR ET AL., INTERVENERS AND APPELLEES.**

G.R. No. 9043. March 31, 1915

Ponente: TORRES, J.

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TORRES, J.:

An appeal filed through bill of exceptions by counsel for the defendants from the judgment rendered in this case, whereby the honorable Dionisio Chanco, judge, ordered the defendant Servando Castro to refrain from carrying out certain operations that are the subject matter of the complaint and to leave things in the condition they were before the operations, with the costs of the trial.

Under date of July 20, 1911, counsel for the 54 plaintiffs, owners of the agricultural lands situate in the places called Surangi and A ring of the town of Batac, Ilocos Norte, filed a complaint in writing in the Court of First Instance of said province, alleging that they are the owners of the arable lands called Surangi and Aring, which from time immemorial have been irrigated by the Surangi Creek, whose waters issue from Mounts Sibbo and Betey and from the springs that arise on Mount Cabaroan; that by reason of the construction and canalization operations carried out by the plaintiffs and their predecessors the waters from said springs flow to the Surangi Creek for the purpose of increasing the volume of water for irrigation of their lands; that at the base of Mount Cabaroan there exists a depression in the land, making a sort of small lake, preserved and continually kept in repair by said complainants and their predecessors, which serves as a reservoir to hold the waters of the Surangi Creek and of the springs, and that the water conserved in said depression is for the irrigation of said lands in the dry season; that the said plaintiffs and their predecessors in interest have every year made repairs thereon, as well as in the Surangi Creek, wherefore the waters of the said creek and the said reservoir are the common property of the plaintiffs; that in September, 1910, the defendants began to fill in the low portion of the land that serves as a reservoir and dug a straight canal, connecting the two bends of the Surangi Creek, which passes through said defendants' lands, thus diverting the course of said creek--facts that constitute an illegal appropriation and a deprivation of plaintiffs' right to use said waters, for the filling in of the depression in the land would cause the disappearance of the reservoir of water for irrigating the plaintiffs' lands in the dry season; that the new canal, being straight, does not check the swift current of the water that flows through it and causes damage to the masonry dams the plaintiffs have lower down in said creek, and moreover it permits the free passage of all kinds of rubbish, sediment, etc., which is deposited on the plaintiffs' lands, causing the destruction of their crops; that the plaintiffs warned the defendants to desist from carrying out said operations, but the latter have continued and continue to carry out the said operations; wherefore the plaintiffs pray the court to issue a temporary injunction against the defendants prohibiting them from continuing to fill in the reservoir that exists at the base of Mount Cabaroan and from diverting the present course of the waters of the Surangi Creek, leaving things in their original condition; and that after trial a perpetual injunction to the same effect be issued against said defendants, and furthermore, to sentence them to pay to the plaintiffs the sum of P1,000 for damages caused the latter, and the

costs.

Under date of July 20, 1911, counsel for Melchor Flor and thirteen other persons presented a petition of intervention praying the court's permission to intervene and join their complaint to that of the plaintiffs, alleging the same cause of action and asking that the defendants be sentenced to leave the creek and reservoir of water as they are, that the court issue an injunction to that effect and order defendants to pay the interveners the sum of P500 for the damages that may be caused them by the interposition of their petition of intervention, and to pay the costs.

Defendants filed their answer, afterwards amended on January 27, 1912, denying each and all of the allegations in the foregoing complaint, as well as the correctness of the sketch, Exhibit A, that accompanied it, and in special defense alleged that Mount Cabaroan belongs to the defendant Servando Castro; that the reservoir which the plaintiffs and interveners claim to have constructed is merely a natural depression located within Servando Castro's lands; that the new canal mentioned in the complaint is under construction on said defendant's lands for the purpose of removing thereto a stretch of the bed of the Surangi Creek, for in the season of rains and floods the current in this creek causes great destruction on the said lands of Servando Castro; that the other defendant, the non-Christian Lincao, is merely a laborer hired by Castro; that the plaintiffs have commenced to use the waters of the Surangi Creek in a manner different from the present, for they have constructed masonry dikes that restrict and check the current, causing the water to pile up in said creek, wherefore the bed thereof within the defendant Castro's lands has been considerably enlarged, thus destroying his land by forming islets and lagoons in locations very different from its original formation, which is burden some and prejudicial to the defendant; that the plaintiffs and interveners have never repaired, or even attempted to repair, the destruction that had been in this way wrought yearly on the lands of the defendant Castro, who has been caused damages to the extent of P3,000; and therefore defendants prayed the court to absolve them from the complaint, to sentence the plaintiffs to permit the change of the present bed of the Surangi Creek to the new canal, or otherwise, if they should prefer that it continue in its old bed, that they construct secure masonry works or walls to reduce the bed of said creek to its original condition, width, and extent within the property of the defendant Castro, said walls to be built high enough to prevent over flow of the water and the destruction and erosion of Servando Castro's lands, and furthermore to pay to the said defendant the sum of P3,000 for the damage suffered by him, and in default of the two conditions mentioned that the plaintiffs be ordered to remove immediately their dams that obstruct the current in the Surangi Creek; with the costs against said plaintiffs.

After submittal to the court of the report of the commissioners who were appointed at the instance of the plaintiffs and who made an inspection of the lands with reference to the facts in controversy, and after consideration of the evidence both parties presented during the trial, the court rendered the decision to which reference has been made. Counsel for the defendant party excepted thereto and prayed in writing for a reopening of the case and the holding of a new trial, which motion was overruled, with exception on the part of the appellant. The corresponding bill of exceptions was presented, approved, and forwarded to the clerk of this court.

The question, therefore, is to determine whether the plaintiffs and interveners are entitled to have the defendant Servando Castro perpetually enjoined from filling in a certain low portion of his land and from changing the course of a part of the Surangi Creek that passes through his own land.

It is duly proven in the record that the plaintiffs and interveners are the owners of certain parcels of land situate in the barrios named Aring and Surangi of the jurisdiction of the town of Batac, Ilocos Norte, having inherited them from their ancestors; that said parcels of land are irrigated by the waters of the Surangi Creek, which has its sources on Mounts Sibbo and Betey and flows through the property of the defendant Servando Castro; and that they have kept said creek in its present condition since the parties to this suit have known it. The plaintiffs have

three masonry dams in the lower part of the Surangi Creek, which serve to check the current thereof and moderate the flow of water into their fields. It is also indisputable that within the defendant's lands the said creek makes two bends in its course, thus forming a semicircle, and that upon issuing from said lands it divides into two branches, the water passing over the said masonry dams before it enters the lands of the complainants. To the east of said bends in the creek lies Mount Cabaroan, at the foot of which and within the semicircle formed by the said creek exists a depression in the land, known by the name of Alibanga, where the water collects during the year and serves to irrigate the fields in the dry season, which depression is some 30 meters in diameter. The defendant has begun to fill in the depression existing on his land and has also commenced to dig a canal to join the two bends of the Surangi Creek, that is the extremities of the semicircle, in such manner that said creek will be straight in that place.

Plaintiffs alleged that such procedure on the part of the defendant was highly prejudicial to them, for with the filling in of the depression that serves as a reservoir their lands lying next to it would be left without irrigation in the dry season and they would be prevented from cultivating said lands, and with the opening of the new straight canal which the defendant is digging their crops would be diminished in a marked degree, since the canal's being straight would permit, as happened in 1911, all kinds of rubbish, sediment, etc., to pass through it and be deposited on their agricultural lands with damage to them; and moreover, the new canal, being straight, shallow, and located in soft soil, would not check the current of the waters, thus allowing them to flow with great force and cause injury to the said dams, which, although they are of masonry, suffered damage during the rainy season of 1911.

The defendant Servando Castro on his part alleged that as he is the owner of the lands the reservoir is on and where he is digging the new canal he has a right to make the change in the bed of the creek in the portion that passes through his lands and to protect his property by filling in the depression which the plaintiffs say serves as a reservoir, for the current in said creek is destroying his lands, the water having eroded them, forming a lagoon 30 meters in circumference and destroying the trees that were on them, all of which resulted in injury to his interests.

It has been proved in a conclusive manner by the statements of the witnesses for the complainants and for the defendants themselves that the Surangi Creek is a public watercourse and flows through and between private properties, among which has been the land of the defendant Castro for over thirty years; for in asserting this fact the defendant said that the creek had been in its present location for over forty years (sten. notes, p. 79). The complainants and their predecessors in interest have enjoyed the use of the waters of said creek since the lands situate in Aring and Surangi were brought under cultivation, the previous owners of these lands having agreed among themselves in the year 1788 (Exhibits D and E) that every year they would repair and clean the ditches that supplied water to their fields, and the Surangi Creek is one of these so-called ditches, it being further provided that anybody who failed to do this work should be punished.

Therefore, it cannot be denied that the plaintiffs and their predecessors in interest have been using the waters of the Surangi Creek for the irrigation of their fields for over thirty or forty years, even without taking into consideration said Exhibits D and E, which date from the year 1788, and although it is true that the defendant Castro has the right, as owner of the land through which a portion of said creek flows, to dispose of said waters as may best suit his convenience and to perform on his land all the operations he may think expedient, still it is no less true that the said complainants have been enjoying the use of the waters of this creek for irrigation purposes for very much longer than twenty years, and, according to article 409 of the Civil Code, the plaintiffs and interveners have acquired by prescription the right to use the waters in said creek, which legal provision is in accord with article 39 of the Law of Waters of 1866, made applicable to these Islands since September 24, 1871, which article reads as follows:

"The right to enjoy in perpetuity the waters of springs and creeks is acquired by the owners of lower estates, and in the same way by those of adjoining estates when they have appropriated said waters without interruption for a space of twenty years."

The waters of the Surangi Creek and of the reservoir that exists on the defendant's land do not belong to the complainants, as they claim, since they have acquired only the right to use said waters indefinitely, through prescription during more than twenty years without any interruption.

The defendant may make use of those waters while they are flowing through his land or remain on it, but from the moment when they leave his tract the owners of the lower or adjacent lands acquire likewise the right to use them, wherefore it is not permissible for the defendant to make any change or alteration in the course of said waters which may result in curtailment of the use of this easement, according to article 545 of the Civil Code. This article permits only that the defendant may carry out on his land operations, repairs, or improvements, and he may change at his own expense the bed of the said creek, provided that he arrange for another place or formation equally suitable and that no injury be caused to the owner of the dominant estate or those who have a right to the use of the easement.

The defendant has begun to dig a new straight canal in place of the old tortuous bed of the creek and thereby is injuring the plaintiffs and interveners, for the new canal by being straight may permit the passage of all kinds of trash, rubbish, sediment, etc., which may be deposited on their fields and thus diminish the productivity of their lands, and as the current that it allows to pass is strong it may cause damage to the irrigation flood-gates that said plaintiffs have for regulating the flow of the water into their fields, thus prejudicing said plaintiffs. With the filling-in which the defendant himself has done on the depression in his land he has deprived the plaintiffs of the use of the water therein; stored for the irrigation of their lands in the dry season, although by reason of the use of this water for over twenty years they are entitled to continue to use it under the protection of the law and the courts.

Since the plaintiffs have proved that they are entitled to seek the remedy asked for in the complaint, the judgment of the court ordering the defendant Castro to leave things as they were formerly and to refrain from carrying out the operations that are the subject matter of the complaint, is in accordance with the law; but it is improper to fix indemnity for damages in the absence of proof that any have been caused.

For these reasons, and holding the errors assigned to the judgment appealed from to be refuted, said judgment should be affirmed, as we do affirm it, with the costs against the appellants. So ordered.

Arellano, C. J., Johnson, Carson, Moreland, Trent, and Araullo, JJ., concur.

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