

7 Phil. 183

[G.R. No. 3010. December 11, 1906]

**JULIAN TUBUCON, PLAINTIFF AND APPELLANT, VS. PETRONA DALISAY,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

For the purposes of this appeal it may be assumed that the plaintiff and defendant are owners of adjoining tracts of land. The claim of the plaintiff is that the defendant, with the permission of the plaintiff,, ten years before the commencement of the action, erected her house upon his land, very near the dividing line between the two properties, and that it has since remained there with his permission and consent. The claim of the defendant is that the house stands upon her own land.

The court below evidently found upon this part of the case in favor of the plaintiff, but ordered judgment for the defendant on the ground that she had been in possession of the land upon which her house stands for ten years and had acquired title thereto by prescription.

The plaintiff moved for a new trial on the ground of the insufficiency of the evidence and has brought the case here by bill of exceptions.

The evidence strongly supports the theory of the court below that, the house was built upon the land of the plaintiff. The testimony of the defendant herself is almost conclusive upon this point. She stated that during the time she occupied the land where her house stood she had never collected any of the cocoanuts growing on the trees standing thereon, but that during all of that time the plaintiff has taken 1 hem. Upon the evidence, judgment should have been in favor of the plaintiff.

In applying the statute of limitations, the court evidently had in mind the provisions of the

present Code of Civil Procedure found in section 41, which fixes the period of prescription at ten years. The prescription, however, in this case commenced prior to the enactment of the Code of Civil Procedure and the right of action had already accrued to the plaintiff when that code took effect. Section 41 is not applicable because section 38 provides as follows:

“Thin chapter shall not apply to actions already commenced, or to cases wherein the right of action has already accrued; but the statutes in force when the action or right of action accrued shall be applicable to such cases according to the subject of the action and without regard to the form.”

The prescriptive law applicable to the case is, therefore, that found in the Civil Code. According to that code, in order to avail herself of the period of ten years it was necessary for the defendant to prove that she occupied the premises under color of title. This, according to the finding of the court below, she did not do, and that finding is supported by the evidence.

The plaintiff brought this action not only for the recovery of the possession of the land, but also for the recovery of 30 pesos as damages for the destruction by the defendant of trees which he had planted upon the land. The evidence shows that the defendant destroyed these trees and that they were worth the sum of 30 pesos. The judgment of the court below is reversed and the case remanded to the lower court with instructions to enter judgment for the plaintiff as prayed for in his complaint, with the costs of the first instance. No costs will be allowed to either party in this court.

After expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the case be remanded to the court below for proper action. So ordered.

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