

[G.R. No. 10209. July 21, 1916]

**ISIDRO BAUTISTA, PLAINTIFF AND APPELLANT, VS. ANGELO ANGELES ET AL.,
DEFENDANTS AND APPELLEES.**

D E C I S I O N

ARELLANO, C.J.:

On October 1, 1911, Isidro Bautista, of the municipality of Navotas, Rizal, obtained a license to build a fish trap in Manila Bay, off the shore in front of said municipality, at a depth of 4 meters of water. The municipality had established a schedule of fees proportional to the depth of the trap; for that of 4 meters, the charge was ₱6 per quarter, and, for the same period, ₱11 for traps 5 meters deep.

Isidro Bautista was charged before the justice of the peace court of Navotas with having built his said trap without the consent of the fish warden and at a place other than that specified in the license issued to him. On November 8, 1911, the justice of the peace court fined Bautista ₱10, and sentenced him to subsidiary imprisonment in case of insolvency, and to pay the costs. He paid the fine and costs and then appealed.

On December 16, 1911, Bautista brought the above entitled action against Angelo Angeles as municipal president of Navotas, and against others not mentioned in the complaint inserted in the bill of exceptions. For the defendants having ordered the trap torn down, plaintiff demands damages in the sum of ₱4,800, the value of the material used in the construction of the trap and the earnings that he failed to collect, the latter being computed at the rate of at least ₱20 per day.

The provincial fiscal answered the complaint in behalf of the municipal president. He alleged in special defense that the president tore down the plaintiff's trap in fulfilment of his duties, and not with the intention of causing any harm.

The Court of First Instance of Rizal, citing the decision of this Supreme Court of December

27, 1910, in the case of Mumar vs. Dieparine (18 Phil. Rep., 74), absolved the defendants from the complaint, with the costs against the plaintiff.

The latter appealed. His principal grievance is that the defendant municipal president ordered the removal of the trap without such removal being decreed in the judgment of the justice of the peace court, whence it is claimed said president acted arbitrarily and, by the loss of the material composing the trap, which was abandoned to the mercy of the waves, the appellant's property was injured and plaintiff was damaged by being unable to make any further use of said material.

The appellee, or rather the Attorney-General, in defense of the administrative acts of the municipal president, presented the following evidence at the trial: (1) Documentary evidence in the form of a municipal ordinance passed on July 2, 1911, article 8 of which prescribes as follows: “* * * if any person builds his enclosure or sets his poles without the consent of the fish warden, in violation of this ordinance, the warden is authorized, with the consent of the president, to remove the trap complained of, after the owner thereof shall have been convicted for the violation of this ordinance;” (2) oral evidence in the form of the testimony of the municipal president, Angelo Angeles, who declared that nine days before he gave the order he repaired to the place where the fish trap was built and saw that about four-fifths of it had fallen over, owing to the violent north and south winds which blew at that season (from the 5th of December, 1911) ; that the appellant had been notified of the order to remove his trap, and that witness had, besides, sent a messenger to him to advise him to gather up the materials, but that, notwithstanding all this, said materials were left and abandoned after the trap had been removed; that the removal of the trap was necessary because another concessionary had a license to set his trap at that depth of 5 meters; and that since the 8th of November, 1911, when Bautista was convicted by the justice of the peace court for the infraction committed by him, he had neither removed the trap nor changed its position. It was stipulated that the testimony of the other witnesses for the defendants would be virtually the same as that above transcribed.

The theory of the appellant is that to evict him and remove his trap from the place which according to the judgment of conviction he illegally occupied, a new judicial complaint was required, and that as the municipal president had not filed another new one, he had acted unlawfully and was liable for the losses and damages caused by the removal of appellant's trap.

It practically behooves us to inquire into and explain the purpose such a new judicial

complaint might have. A municipal council passes an ordinance which prohibits the obstruction of a public street and provides that if anyone should obstruct it, the municipality can remove the obstruction upon conviction of the offender. A obstructs a public street and is convicted by a court of competent jurisdiction of a violation of the ordinance. According to the appellant's theory, the municipality would have to fold its arms, the street would not be cleared, A pays the fine, serves the sentence imposed upon him for having obstructed the street, and continues to obstruct it awaiting for the municipal council to file another suit against him to compel him to remove the obstruction; in other words, A has the right to *continue the transgression*, to set himself above the law, in order to continue to do that which he knows is a violation of the law, a disobedience of the law, or what is the same thing, by paying fines, he can continue to disregard the law. And why the new complaint? To prove that he was not obstructing the street? But he has been convicted of so doing; the matter has already passed to the status of *res judicata*. Is it because the municipal council has need of the arm of the judiciary in all of its activities, and that it has no right to take any action in its own behalf, not even to enforce its ordinances? This theory would lead to the absurdity that administrative officials lack all executive powers. It devolves upon the judicial power to convince the private individual, the party governed, that he has no right to do what he did in violating orders of the administrative authorities issued by them in the exercise of their rights. Once he is convinced, the administrative authorities, by virtue of their own powers, impose the weight of their authority upon him. If they, the administrative authorities of public officials, exceed lawful limits in the exercise of their power of execution, the law provides what shall be done before the judicial power can step in and repair the damage to the private interest, or apply the law by declaring what was properly or improperly done in exercising public power. The proper separation of powers requires this in order that each of them in its own sphere may exercise the attributes conferred upon it by law.

The provisions of article 1902 of the Civil Code, which make the guilty party liable for the damage caused by any act or omission, when there is fault or negligence, do not apply to an administrative officer not convicted in the administrative sphere of having exceeded the powers conferred upon him by a municipal ordinance duly passed and not challenged in a proper action as being unconstitutional. The first and fifth assignment of error have no merit; the latter, in that the trial court did not err in absolving the defendants from the complaint, and the former, in that the court did not err in considering that the violation of the municipal ordinance in question (which was punished by a court of competent jurisdiction) was a lawful cause for the enforcement of the ordinance.

The second assignment of error is disallowed, inasmuch as the trial court did not err in not holding that the act of the appellee in causing the removal of the trap was malicious, culpable and negligent.

The third and fourth assignment of error are disallowed because no error was committed in applying the principle laid down by this Supreme Court that a person cannot obtain damages for the harm resulting from his own improper and unlawful acts.

The judgment appealed from is affirmed, with the costs of this instance against the appellant. So ordered.

Torres, Johnson, Trent, and Araullo, JJ., concur.

Moreland, J., did not take part.