

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. BONIFACIO GARING, DEFENDANT AND APPELLEE.*G.R. No. L-8611. October 13, 1914*

Ponente: ARAULLO, J.

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Bonifacio Garing was charged before the ex officio justice of the peace of the subprovince of Mindoro with having violated Municipal Ordinance No. 9, amended by No. 14, series of 1900, of the township of Naujan, and was sentenced to pay a fine of P100, with subsidiary imprisonment in case of insolvency, and the costs. From this judgment the defendant appealed, and thereupon the provincial fiscal of Batangas and Mindoro filed a complaint before the Court of First Instance of the latter province, charging the said Bonifacio Garing with having placed, maliciously and criminally, on or about November 4, 1911, a fish weir in the Butas River of the township of Naujan, which device, though it faced the sea, was arranged in such wise that it caught fish coming from the Naujan Lake, all in violation of Municipal Ordinance No. 14 of the said township, series of 1900.

The defendant having filed a demurrer to the complaint, on the ground that the said ordinance was unconstitutional and therefore null and void, the court sustained the said demurrer by an order of March 12, 1912, the grounds and despositive part of which are as follows :

"* * * The prohibited district is the sea coast. The court has had occasion to examine cases relative to fisheries, on account of his having held the office of fiscal for several years, and to decide cases of this kind in his present capacity of judge. At the present time there is no law in the Philippine Islands that empowers municipal councils to prohibit fisheries, though they are authorized to grant fishery licenses and privileges, but this is as far as their power in this respect extends. That a municipal council should prohibit fishing, and especially on the Naujan coast, in the sea, is something this court has never seen nor heard of. Fishing in the sea is absolutely free, and a municipality may only regulate the same by granting a license for a certain district or a privilege for such fishing. The court has duly considered the brilliant arguments of the attorneys who have appeared in these two cases, and; deciding both the latter at once, decrees their dismissal, with the costs de officio. The court, at the same time, holds that the aforesaid ordinance is illegal and unconstitutional. So ordered."

An appeal from the said order was taken by the fiscal, and, the case having been brought up to this court by a writ of mandamus issued to the said Court of First Instance on account of his refusal to allow the appeal, the said appeal is now before us pending decision.

The ordinance concerned in the order appealed from the Court of First Instance of Mindoro, reads as follows:

"An ordinance for the preservation of the fisheries of Butas and San Agustin Rivers, which constitute a continuous source of revenue for the township of Naujan.

"Whereas, the practice of catching fish in large numbers on their way from Lake Naujan to their spawning ground in the sea where they deposit their eggs has led to a marked decrease in the number of fish taken annually in the Butas and San Agustin Rivers and will ultimately end in the destruction of the fisheries of these rivers, which form a continuous source of revenue for the township of Naujan: Now, therefore, Be it enacted

by the council of Naujan that:

"Article 1. On and after the 1st day of August, 1909, the construction of fish weirs, traps, or other devices of any description opening upstream or designed to catch fish running from Naujan Lake to deposit their eggs in the sea is hereby prohibited on the Butas and San Agustin Rivers between October 16 and February 15. Traps and other devices may be placed in said rivers between October 16 and February 15 with their mouths opening downstream or in such a way as to catch fish coming up the river to Naujan Lake, but every such trap or device for catching fish shall have its openings at least 1 inch in diameter, and shall otherwise be so constructed that the passage of the young fish from the sea to Lake Naujan may otherwise be unobstructed.

"Art. 2. On and after the 1st day of August, 1909, fish weirs, traps, and other devices may be placed in the Butas and San Agustin Rivers between February 16 and October 15 with mouths opening upstream or designed to catch fish running from Lake Naujan to the sea. But every such trap or device for catching fish shall have its openings at least 1 inch in diameter and shall otherwise be so constructed that the passage of the young fish from the lake to the sea will always be unobstructed.

"ART. 3. The taking of fish known as banacs from the sea within the jurisdiction of the township of Naujan between the mouth of the Nag-iba River and the point where the boundary line between Lake Naujan and Pola reaches the sea is hereby prohibited between October 16 and February 15. From February 16 to October 15 banacs may be taken from the sea within the jurisdiction of Naujan, but all nets and other fishing devices used must have their openings at least 1 inch in diameter, and shall otherwise be so constructed that young fish can get through and will not be caught.

"Art. 4. Violators of this ordinance shall, upon conviction before a court of competent jurisdiction, be punished by a fine of P50 for the first offense, and a fine of P10 for each subsequent offense, and in case of insolvency shall suffer subsidiary punishment at hard labor in the municipal or provincial jail at the rate of one day's imprisonment for each peso of the fine."

From the text of the ordinance above quoted it is seen that by means thereof, the municipal council of Naujan did nothing more than regulate the use and enjoyment of the right to fish in the Butas, San Agustin, and Nag-iba Rivers, by designating the seasons of the year when this right might be exercised and the manner of so doing, in such wise that no detriment should thereby result to the development of the said industry and occasion a decrease in the number of fish ascending the said rivers from the sea to Naujan and Pola Lakes or descending them again, and by prescribing for this purpose the form of the fishing weirs or devices which might be constructed in each of the said rivers in the respective seasons. It is logical that the regulations so established should imply the prohibition to exercise such a right in the seasons of the year not included among those specified in the ordinance, and this very implication shows that that right is not prohibited by them, but, on the contrary, is granted through means of the necessary regulation for the protection and improvement of the said common property of the municipality of Naujan. Under this consideration, it is very clear that it cannot be maintained that the said ordinance is unconstitutional, and so much the less so in that, as appears from its very text, the alleged prohibited district mentioned in the order appealed from is not the seacoast as therein stated, for articles 1 and 2 of the said ordinance refer to the construction of fish weirs, traps, or other devices in the Butas and San Agustin Rivers, and article 3 thereof, though it speaks of the taking of fish known as banacs from the sea, limits such fishing to the territory comprised within the jurisdiction of the township of Naujan—that is, to the area within which the municipal council of this township can exercise its jurisdictional powers.

With respect to the questioned validity of the said ordinance, it must be borne in mind that section 29 (r) of Act No. 1897, The Township Government Act, prescribes, among other duties of the township council, that it shall: "Make such ordinances and regulations, riot repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred by this Act, and such as shall seem necessary and proper to * * *

promote the prosperity * * * for the protection of property * * * and enforce obedience thereto with such lawful fines or penalties as the council may prescribe under the provisions of subsection (q) of this section."

The same Act, in section 43, subsection (a), as amended by section 2 of Act No. 1689, provides, as one of the sources of revenue of the townships, that these latter may collect fees for the granting of fishery privileges. This provision clearly and explicitly gives it to be understood that the townships also have the power to pass ordinances regulating fisheries or the exercise or enjoyment of the right to fish within their respective jurisdictions, for the granting of such privileges or of the licenses required for those purposes must necessarily be the subject matter of proper regulations, aside from the fact that, since one of the means of furthering the prosperity and protecting the interests and property of the municipalities or townships, which are also those of their inhabitants, is the adoption of rules that may conduce to the good use and adequate, proper, and regulated enjoyment of such interests and property, it must be understood that power has been granted to the townships to pass ordinances and provide regulations relative to fisheries or the exercise and enjoyment of the right to fish within their respective jurisdictional limits, pursuant to the provisions of section 29, subsection (r), of Act No. 1397, aforementioned. That such construction of the law with regard to townships is correct, it is sufficient to say that, although corporations both public, among which are municipalities; as well as private have those powers that were expressly conferred upon them by the Act which created them, or, in the case of private corporations, by the Act under which they were organized, they also have, pursuant to the general law on the matter (Act No. 1459, sec. 2), the powers incident to their existence—that is, all such as have for their aim the realization, fulfillment, and carrying out of the purposes for which such corporations were created or organized, and others in relation to all matters which are or may be connected with those purposes, for such is the scope and import of the words incident to its existence, contained in the aforecited section 2 of the Corporation Law. And inasmuch as among those purposes, in respect to municipal councils of townships, are included all such as may conduce to securing the greatest sum of material good for the inhabitants of the township and their general welfare, through the improvement of the sources of wealth and production, the development of their properties and industries and the creation of just and adequate taxes thereon, consequently also the township of Naujan must have had power to pass the ordinance in question and this ordinance must be valid and legal.

For the foregoing reasons we revoke the order of dismissal appealed from and overrule the demurrer filed by the defendant against the complaint. The case will be remanded to the court below for further proceedings.

Arellano, C. J., Torres, Johnson, Carson, and Moreland, JJ., concur.

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