

SIMEON VINCO, PLAINTIFF AND APPELLANT, VS. THE MUNICIPALITY OF HINIGARAN, OCCIDENTAL NEGROS, DEFENDANT AND APPELLEE.*G. R. No. 11211. February 28, 1917*

Ponente: ARAULLO, J.

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On January 9, 1915, the plaintiff, upon payment of the proper tax, obtained from the municipal treasurer of the municipality of Hinigaran, Province of Occidental Negros, a permit to establish a cockpit on Calle Luzuriaga, within the inhabited portion of the municipality of Hinigaran. But on December 29th of the preceding year, 1914, the municipal council of Hinigaran had passed ordinance No. 3 of the series of that year, since which time it had been in full force and effect. Section 3 of this ordinance provided that only one cockpit would be allowed within the center of the municipality and one in each barrio. As, since January 1, 1915, there was already a cockpit in the center of the said town, the concessionary of which was Gorgonio Guison, who obtained from said municipal council the proper permit on January 1, 1915, prior to the date the license was granted to the plaintiff Simeon Vinco, the latter alleged that said section 3 was illegal, null and void, because it was contrary to the provisions of the Municipal Code in force, and tended to create a monopoly. On January 29th of the same year plaintiff therefore petitioned the Court of First Instance of said province to declare section 3 of said ordinance to be null and void and of no force and effect, and prayed that a writ of preliminary injunction issue against said municipal council enjoining it from depriving plaintiff of his right to open, and from interfering with or molesting him when he should open, the cockpit for which he had already obtained said license, and from holding cockfights in said cockpit on the holidays permitted by law.

The defendant in its answer maintained that the ordinance in question was a valid one and prayed that plaintiff be ordered to pay it damages in the sum of P400. On April 30, 1915, the Court of First Instance of Occidental Negros rendered judgment in which he held said ordinance to be valid and legal, dismissed the complaint without express finding as to costs, and dissolved the preliminary injunction issued on plaintiff's petition. From this judgment plaintiff appealed, after first filing a motion for a new hearing, which was denied him, and to which ruling he also took exception.

In his brief, plaintiff claims that the lower court erred: (1) In holding section 3 of said ordinance to be valid and legal; (2) in holding that a cockpit is not a business enterprise in the true sense of the word business; and (3), in not granting the new hearing requested by him.

The Honorable Judge Norberto Romualdez, who entered the judgment aforementioned, rendered the following opinion in support thereof:

"The Municipal Code, Act No. 82, in subsection (j) of section 40, empowers municipal councils not only to regulate, but also to prohibit cockpits. In the opinion of the undersigned, cockfighting cannot be considered an ordinary business enterprise in the true sense of the word business, one which means that which engages the

time, attention, and labor of a person in pursuit of his livelihood or of gain, but is a gambling game which unquestionably can and may have disastrous consequences. Municipal councils have police power over cockpits and the limitation of the number of cockpits in specified places is, in the opinion of the undersigned, a sound and reasonable exercise of that power. As no business, in the proper sense of the term, is involved in this case, it cannot be held that said ordinance tends to create a monopoly."

To the foregoing reasoning we have but to add that, although it be admitted that cockfighting might be considered as an ordinary business in the proper sense of the word business, yet as subsection (j) of section 40 of the Municipal Code provides that one of the powers of municipal councils is to regulate and permit, or to prohibit, cock-fighting within their respective municipalities—a power

which is related to the duty assigned to municipal councils by section 39, subsection (u), of said code, to provide against the evils of gambling, and, pursuant to subsection (jj) of the same section, to make such ordinances and regulations, not repugnant to law, as shall seem necessary and proper to improve the morals and provide for the peace, good order, comfort, and convenience of the municipality and the inhabitants—the power to limit the number of cockpits within a municipality or any barrio thereof unquestionably lies within the province of the municipal council and is at the same time one of its duties. It is likewise undeniable that the provisions adopted by municipal councils in ordinances of this nature are valid and legal.

We therefore affirm the judgment appealed from, with the costs of this instance against the appellant. So ordered
Torres, Carson, Moreland, and Trent, JJ., concur.

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