

**CONSTANCIO JOAQUIN, PLAINTIFF AND APPELLANT, VS.
GODOFREDO B. HERRERA, AS MUNICIPAL PRESIDENT OF
CALOOCAN, RIZAL, LOPE K. SANTOS, AS PROVINCIAL GOVERNOR,
AND THE PROVINCIAL BOAR...**

G.R. No. 11217. February 28, 1918

Ponente: STREET, J.

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STREET, J.:

This controversy is concerned with the rival claims of Constancies Joaquin and Jose Javier to the concession for running two cockpits situated just beyond the corporate limits of the city of Manila, in the barrios of La Loma and Maypajo, in the municipality of Caloocan, Province of Rizal. It appears that in March, 1913, when the original complaint in this cause was filed, the plaintiff Joaquin owned or had obtained control of the two cockpits in question; and he had been seeking for a month or more to procure a license from the municipal authorities authorizing him to open these cockpits to the public.

Under the provisions of law then in force in the Philippine Islands municipal councils were clothed with authority "to regulate and permit or prohibit cockfighting and the keeping or training of fighting cocks, and to close cockpits." (Act No. 1909, sec. 1.) In pursuance of this authority, the municipal council of Caloocan had, late in the preceding year, enacted a new ordinance prescribing the conditions under which cockpits might be conducted. This ordinance contained the following among other provisions:

"SEC. 4. The municipal president is hereby authorized to issue permits for the keeping of cockpits within the jurisdiction of this municipality, pursuant to the provisions specified in this ordinance, for a period not to exceed four years."

Upon the 4th day in February, 1913, the plaintiff Constancio Joaquin appeared before the municipal president and requested that a license be issued to him under said ordinance authorizing him to conduct the cockpits in Maypajo and La Loma. At this time there was pending an action in the Court of First Instance of the province of Rizal (Bertol et al. vs. Santos et al., No. 986) instituted by the parties who had been theretofore engaged in running these cockpits. These persons questioned the validity of the new ordinance and in that action had obtained a preliminary injunction against the municipal president of Caloocan and other officials prohibiting them from molesting the plaintiffs in the conduct of these cockpits. This preliminary injunction was still in force at the time the plaintiff Joaquin made application for a license for running the cockpits in the places mentioned. The plaintiff therefore in his application made reference to the existence of this injunction and stated that if the license should be issued to him and the plaintiffs in the injunction suit should prevail, the license or permit granted to him would be considered as cancelled. Upon the 5th of February, 1913, Godofredo B. Herrera, municipal president, issued a license pursuant to this application, in which it was stated that the same should be considered cancelled and of no effect if the plaintiffs in the then pending action for injunction should prevail. Upon February 13, 1913, the municipal council of Caloocan adopted a resolution in which it revoked this license, the reason alleged being that

Joaquin had not made the requisite deposit to secure the payment of the fees and taxes. Ten days later, however, to wit, upon February 23, 1913, the municipal council passed another resolution whereby its prior resolution revoking Joaquin's license was itself annulled and the license in question reinstated. The reason for this step seems to have been that the previous resolution had been passed under a misapprehension with respect to the deposit made by Joaquin; and it is a fact that the requisite deposit had already been made by him. Five days later, to wit, on February 28, 1913, Godofredo B. Herrera, as municipal president, vetoed the last mentioned resolution and returned it to the council without his approval. Meanwhile, upon February 24, 1913, the injunction which had been obtained by the parties who had conducted the cockpits up to that time was dissolved. The plaintiff, Constancio Joaquin, thereupon again appeared before the municipal president and upon March 1, 1913, applied anew for a license permitting him to conduct the cockpits in question. This application was denied.

Matters having reached this point, the plaintiff Constancio Joaquin filed his original complaint in this cause, upon March 1, 1913, in the Court of First Instance of the Province of Rizal. His purpose in instituting this action was to compel the defendant, Godofredo B. Herrera, as municipal president, to issue a license authorizing him to conduct the cockpits in question for a period of four years, And incidentally to enjoin the defendant, his successors in office, his agents and servants, as well as all others who might aid or assist him therein, from hindering or molesting the plaintiff in the conduct of said cockpits. The plaintiff also prayed for a temporary mandatory injunction requiring the defendant to issue a license as contemplated in the complaint for the period during which this litigation should be pending in the court. From the foregoing statement of the nature of the relief sought it is evident that the present action is in the nature of an application for a writ of mandamus and incidental injunctive relief.

Upon the filing of this complaint, the judge of the Court of First Instance of the Province of Rizal issued a preliminary mandatory injunction requiring the aforesaid Herrera to issue the license in conformity with the prayer contained in the complaint, upon the execution of a bond which was duly approved by said judge. These steps were accordingly taken, and the license was issued pursuant to said order.

Turning our attention again to the wrangles of the municipal authorities of Caloocan over the granting of the license sought by Joaquin, we find that after Herrera vetoed its resolution of February 23, 1913, the municipal council passed it again, with the necessary majority, over his veto. This occurred upon March 10, 1913. The resolution was then suspended by the provincial board of the Province of Rizal upon the ground that the resolution was invalid and that the opinion of the fiscal was desired thereon. The resolution seems thereafter to have remained undisturbed and nothing has since been heard of it.

In the month of April, 1913, it happened that the defendant Herrera temporarily ceased to discharge the functions of municipal president in Caloocan, and his duties were performed for a few days by Leopoldo Ponciano, the municipal vice-president. This official was friendly to the designs of Joaquin, and the latter accordingly at once made application to him for the issuance of another license covering the desired privilege. The plaintiff's purpose was of course to cure the defect in his title to the concession and thereby put himself beyond the dangers and vicissitudes of litigation. In this, however, he was disappointed, for within a few days Herrera returned to duty and revoked the license which had been issued by Ponciano. In his amended complaint the plaintiff Joaquin relies upon the license issued by Ponciano and insists that the revocation of the same by Herrera was invalid.

The foregoing statement embraces every fact necessary to the determination of the rights of the plaintiff to the license sought by him. The questions of law arising thereupon will be discussed later.

The rival pretensions of Jose Javier as conductor of these cockpits have their origin in an application, dated December 28, 1912, and directed by him to the provincial board of the Province of Rizal wherein he indicated a

desire to acquire the privilege of running five cockpits in the environs of Manila, located in the four municipalities of said province which are in immediate proximity to the city. The barrios of La Loma and Maypajo, in the municipality of Caloocan, were two of the places contemplated in his application as cockpit sites. This applicant appears to have been desirous of securing a monopoly of all the cockpits around the city, and as they were located within the jurisdiction of four municipalities, he thought well to address his application in the first instance to the provincial board. The board immediately endorsed the aforesaid application to the municipal council of Caloocan for action thereupon with respect to the two cockpits located within the jurisdiction of the latter body. In various sessions held near the end of December and in the first half of the month of January the municipal council had this application under consideration; and while the body manifested a friendly attitude towards the applicant, the desired concession was not obtained, apparently because of the failure of the applicant to put up the requisite bond. Finally, upon January 30, 1913, Jose Javier deposited with the provincial treasurer a bond, signed by two sureties, Silvino Lim and J. Limjap, for P54,000 to secure the payment of all license fees and imposts which might become owing by him as licensee or concessionary of the cockpit privileges aforesaid. On the same day, in order apparently to secure his bondsmen against loss from their obligation as sureties, Jose Javier executed an assignment of any rights possessed by him as concessionary of said privileges to his sureties Lim and Limjap. Later (March 10) this assignment was substituted by another document executed by Javier by which it was declared that for exploitation of said concession the two sureties aforesaid would have the character of capitalists while Javier would act as an industrial partner. Prior to March 11, 1913, the rival applicants, Joaquin and Javier, had not directly crossed swords with each other, their efforts being directed toward procuring the requisite license from the municipal authorities; upon this date Javier made a motion in the present cause asking leave to intervene, alleging that he had a legal interest in the subject matter of the litigation. Leave to intervene was granted and Javier filed his petition of intervention in which he asserted a right to the cockpit license superior to that of Joaquin and prayed that the preliminary injunction already granted in favor of the latter be dissolved and that the court should further require the municipal president to issue a license in favor of himself.

It should be noted that up to this juncture in these contentions Joaquin had in his favor the fact that he owned or controlled the only existing pits in which the cockfighting could be conducted. Where or how he acquired that control does not appear. Therefore, all he needed was the requisite license permitting him to open the pits in question to the public. His opponent Javier, on the other hand, was apparently handicapped by the fact that he had no places ready to open for business. It is evident that at no time did this litigant have any control over the particular cockpit sites controlled by Joaquin.

We deem it well, before passing to other complications of the case, here to indicate our opinion upon the merits of the claims of the respective contestants as thus far developed. To begin with, the cockpit ordinance mentioned at the beginning of this opinion was entirely valid, being a proper exercise of the regulative authority over the subject of cockfighting conferred upon municipal councils by Act No. 1909-1, amendatory of Act No. 82-40 (j).

Article 4 of said ordinance, quoted at the beginning of this opinion is also, in our opinion, a proper and reasonable provisions; and it is not subject to criticism as an attempted delegation to the president of the regulative authority which is by law vested exclusively in the council. The licenses must be issued by somebody; and there would seem to be no more suitable personage upon whom the duty of emitting such documents could be imposed than the municipal president, who is by law the presiding officer of the council. The duty in question, it will be observed, is partly ministerial and partly discretionary. The period of time during which the license may run may extend to the limit of four years, and within the limits of that period the municipal president would undoubtedly have a discretion as to the duration of the license. He might, for instance, be aware that the municipal council was contemplating the closing of the cockpit for which a license was desired; and he might, for this or other reasons, think it inadvisable to issue a license for the full period of four years. The licensee, on the other hand, might not

be willing to undertake to conduct the cockpit for the whole period. The discretion of the president, furthermore, obviously extends to certain other matters. It is his duty to inform himself as to whether the licensee is in a position to comply with all the conditions prescribed in the ordinance. For instance, the ordinance prescribes that cockpits can not be established nearer to each other than a fixed distance. It is also provided that there shall be only one cockpit in the poblacion. The president should ascertain the willingness or ability of the assignee to fulfill all such conditions.

It will be noted also that the ordinance in question does not peremptorily declare that the president shall issue the cockpit license to proper applicants, but merely vests in him an authority to emit such license. The president, as an executive officer, is charged with the duty of seeing that all laws and ordinances are carried into effect. As the presiding officer, of the council he participates in its deliberations, and when occasion arises he may convene the body in special session. It results that in our opinion the faculty vested in the president by this ordinance clearly involves, as has already been stated, an element of discretion. It is true that the president is not clothed with the power to regulate or suppress cockpits. That matter is confined by law to the council and the general policy to be assumed with regard to these places of entertainment must be determined by that body.

In the light of what has just been stated, it is obvious that the plaintiff can not maintain the writ of mandamus to compel the issuance to him of a cockpit license on the facts which existed on March 1, 1913. The most important principle to be observed in the exercise of the jurisdiction by mandamus, and one which lies at the very foundation of the entire system of rules and principles regulating the use of this remedy, is that which fixes the distinction between duties of a peremptory or mandatory nature and those which are discretionary in their character, involving the exercise of some degree of judgment on the part of the officer or body against whom the mandamus is sought. Stated in general terms, the principle is that mandamus will lie to compel the performance of duties purely ministerial in their nature and so clear and specific that no element of discretion is left in their performance; but that as to all acts or duties necessarily calling for the exercise of judgment and discretion on the part of the officer or body at whose hands their performance is required, mandamus will not lie.

It may also be said that the discretion vested in the municipal president with respect to the issuance of cockpit licenses is of an executive and political nature; and we believe that it would be violative of sound principle and injurious in its practical results for the courts to undertake to control this officer in the exercise of the power conferred upon him by this ordinance. It is true that the applicant Joaquin had complied with every prerequisite specified in the ordinance; he had the pits in which cockfighting could be lawfully conducted; and there is no suggestion that his personality as the manager of such a business was objectionable, or that there was any danger that cockfighting would be there conducted in improper ways. It cannot be admitted, however, that the individual interest is greater than that of the public welfare of which the president is supposed to be the guardian when acting within the limits of his lawful powers. But it will be said that if the president cannot be coerced by the writ of mandamus, he will be in a position to thwart the will of the council and practically to put an end to cockfighting by refusing to issue a cockpit license to any person. We do not think that this argument is by any means conclusive, for we must remember that the council remains in existence, with its stated meetings; and if it should find that the president is presuming to go beyond the proper limits of his functions, the council would have the power, by its own resolution or ordinance, to override his will and to grant a concession to any suitable person, for it is not to be supposed that the delegation to him of the authority to emit cockpit licenses has stripped the council of its faculty of determining the matter for itself.

The doctrine is well accepted in the United States that, generally speaking, mandamus will not lie to compel the issuance of a license to exercise a privilege. (*Adams vs. Stephens*, 88 Ky., 443; *State ex rel. Campbell vs. Cramer*, 96 Mo., 75, 83; *State ex rel. Daboval vs. Police Jury*, 39 La. Ann., 759, 765; *People ex rel. Schwab vs. Grant*, 126

N. Y., 473; Schlaudecker vs. Marshall, 72 Pa. St., 200, 207.) No case has come to our attention in which the writ of mandamus has been sustained in a situation such as is now before us. It is, however, undoubtedly true that the remedy could be used to restrain gross abuse in an exceptional case. Thus, the writ has been allowed in a case where the municipal authorities refused to grant a license to a brewing establishment, where the applicant had complied with all statutory requirements. (Prospect Brewing Co.'s Petition, 127 Pa. St., 523.) It was admitted that the action could not have been maintained if the question had been over the issuance of a license to sell liquors at retail, since the selling of liquors at retail is much more closely connected with the moral health of the community. It must be conceded that cockfighting is on about the same plane as the conducting of dance halls and the selling of liquor; and it is generally recognized that police supervision over these forms of entertainment and diversion can be much more strict than over activities of a harmless nature. We are therefore of the opinion that the Court of First Instance committed no error in denying to the plaintiff at the final hearing the writ of mandamus which was the object of this action, in so far as relief was sought upon the facts which existed upon March 1, 1913.

In the preceding discussion we have considered the pretensions of the plaintiff Constancio Joaquin solely with reference to the situation which existed upon March 1, 1913, without regard to license originally issued in his favor by president Herrera on February 5, 1913. But we are of the opinion that the applicant acquired no rights under that license for two reasons: In the first place, the preliminary injunction was still in force in the case of Bertol et al. vs. Santos et al., whereby the president of the municipality of Caloocan and others were required to abstain from impeding the plaintiffs in that action in the exploitation of their cockpits and from requiring them to close the same. The license in question could not therefore actually take effect until that injunction should be dissolved; and the issuance of said license on February 5 was to say the least premature. In the second place, this license was, as we have already stated, subsequently revoked by the municipal council; and though an attempt was made by the council to get it reinstated by resolution, this effort was in the end unsuccessful, owing, first, to the veto of the president, and secondly, to the action of the provincial board in suspending the resolution. Although under the law as it then existed the veto power of the president extended only to the veto of "ordinances" (Act No. 82, sec. 18, k), we are of the opinion that the resolution of the council by which it undertook to reinstate its previous resolution and thereby revive the concession or license, in favor of the plaintiff was an ordinance within the meaning of the law. This resolution was an expression of the legislative will of the council and derived its validity from the authority to regulate cockpits which is conferred on the council by law. It is clear that the council could not defeat the veto power of the president merely by putting a proposition in the form of a resolution; and it is the substance of the provision which determines its character. We note that in the Administrative Code now in force the codifiers have removed all doubt as to the extent of the veto power of the municipal president by placing a restrictive definition upon the word "ordinance," as therein used, and expressly extending the veto power of the president to resolutions. (See Administrative Code, secs. 2227 and 2229.) These provisions practically have the same effect as the former provision, as now interpreted by us.

The action of the provincial board in suspending the resolution in question after it had been passed over the presidential veto was doubtless a partisan act intended to obstruct the plaintiff and assist the rival claimant; but the board was acting within the scope of its lawful powers, and it is not for us to scrutinize the motive of its action. If the plaintiff had chosen to prosecute his rights under that resolution to the end, it would have been necessary for him to secure action upon it by the official authorized to pass upon its validity. As he did not do so, the resolution must continue to repose in the pigeonhole where it had been placed. It follows that as the plaintiff had acquired no right under the license of February 5, the merit of his claim at the time of the institution of this action must be determined without reference to that license.

When we come to consider the rights of the plaintiff Constancio Joaquin under license issued upon April 18,

1913, by Leopoldo Ponciano, he appears to be in a much stronger position; and we are of the opinion that this license constitutes a valid source of title. Of this license the plaintiff has properly availed himself by setting up his rights thereunder in his amended or supplemental complaint. The action of the president, Herrera, in revoking this license upon April 25, 1913, was in our opinion an unauthorized act and by no means destroyed the privilege which the plaintiff had acquired thereunder. To revoke a cockpit license is to close a cockpit, and this is a power which by law is confided in the council. It is not a case where the power to issue a license implies the power to revoke it. It is evident that the revocation of an existing license is a much more serious thing than the refusal to issue it in the first place; and from the fact that the president may have discretion to refuse a license, it does not follow that he can revoke a license which has been lawfully issued. There possibly may be grounds which might justify a municipal president in canceling a license issued by himself, as where it should appear that the license had been procured by fraud or issued by mistake, or that the applicant had not complied with the conditions precedent. But no such ground of revocation has been suggested in this case. However uncertain and insecure the rights of the plaintiff may have been before that license was issued, there can be no doubt that it conferred upon him the privilege of exploiting his cockpits until the license should be lawfully revoked or terminated.

If we are right in the conclusion that the president had no power to revoke this license, it necessarily follows that the plaintiff was entitled either to have that license reinstated by writ of mandamus or to have a judgment enjoining the defendants from obstructing him in the exploitation of the cockpits. Both species of relief are sought in this action. The question as to remedy is now evidently academic as the term of the license has passed; but the declaration as to the right is important as will appear further on in this opinion.

As regards the claim of Jose Javier to have a license issued to him for two cockpits in Maypajo and La Loma, as prayed in his petition of intervention, we discover no grounds for considering him entitled thereto; and no error has in fact been assigned in his behalf upon this appeal. But the claims of Silvino Lim and Jacinto Limjap, who petitioned to intervene in the cause at a subsequent stage, are connected with the pretensions of Javier. The rights of these new parties will be discussed later. Javier's side of the controversy seems to have been conducted on the assumption that the municipality had the authority to install him as concessionary of these cockpits to the same extent as if it had been owner. No doubt one idea which actuated him and his associates was that if he got the license to run cockpits in the localities mentioned the owners would come to terms with him, as under the law no other cockpits could be established or conducted in the same places.

The next chapter in the history of this litigation is concerned with an application for writs of certiorari and prohibition filed in this court upon March 4, 1913, in the case of Herrera vs. Barretto and Joaquin (25 Phil. Rep., 245.) The purpose of this proceeding was to obtain an order from this court vacating the preliminary mandatory injunction which had been issued upon the order of the Honorable Alberto Barretto upon March 1, 1913, in the present cause, by virtue of which, as we have already seen, the plaintiff in the present action had obtained the issuance of a license from the municipal president of Caloocan and was then engaged in conducting his cockpits under the protection thereof. Into this proceeding Jose Javier introduced himself by a petition of intervention alleging that he had a lawful interest in the subject matter of the litigation; and upon April 19, 1913, leave to intervene was granted. Having thus become a party to the proceeding, Javier, applied for the immediate issuance of an interlocutory injunction against Constancio Joaquin requiring the latter to cease and abstain from the operation and maintenance of the two cockpits in La Loma and Maypajo. Upon May 21, 1913, the cause was heard upon this application by a Justice of this court; and upon the same date an injunction was issued in conformity with the application. In the original order for the issuance of the injunction, no injunction bond seems to have been required; but later Javier was required to give bond and after some delay, the necessary bond, or bonds, were supplied and approved.

When the application for the writs of certiorari and prohibition came on to be heard before the Supreme Court, the said application was dismissed; and the interlocutory injunction which had been issued on May 21 was dissolved. Within due time Constancio Joaquin appeared in the proceeding just mentioned and laid before this court a complaint specifying the items of damages which he claimed to have suffered, during the period from May 21, to July 29, inclusive, by reason of the closing of his cockpits under the injunction issued at the instance of Javier. He accordingly prayed for judgment upon the injunction bond for these damages. The court disposed of this matter by holding that the liability of the parties to said bond and the amount of the damages to be assessed against them, if any, by reason of the wrongful suing out of the injunction were matters which should be determined in the present suit, and not in that proceeding. The plaintiff was accordingly remitted to the Court of First Instance for the vindication of his rights in respect to this matter. Upon this state of facts it is obvious that, if the plaintiff Joaquin has established his right to relief in the present action, he is entitled in this cause to have his damages assessed upon the injunction bond.

Joaquin having been put temporarily out of business by the injunction above mentioned, Jacinto Limjap appeared before Herrera, municipal president of Caloocan, and Applied for a license to run two cockpits in Maypajo and La Loma. This license was issued to him on July 2, 1913. It purported to be a provisional license, being expressly contingent upon the outcome of the pending litigation; and the licensee obligated himself to surrender the license if the pending controversy should be decided unfavorably to his contentions. Upon July 10, 1913, Limjap was deprived of the fruition of this license by an injunction issued upon the order of one of the Justices of this court enjoining him from conducting cockpits under said license. This injunction had originally been issued upon July 2, 1913, at the instance of the plaintiff Joaquin and was directed primarily against Herrera, the object being to prevent the latter from issuing a license to anybody pending the principal action; and when it was discovered that Limjap had procured his license before the injunction had been issued, the Justice who had issued the injunction decided, upon application of the plaintiff Joaquin, to make the injunction effective also against Limjap, as was accordingly done.

Having been thus brought within the orbit of this litigation, Jacinto Limjap appeared before the Court of First Instance in conjunction with his associate Silvino Lim, and upon September 17, 1913, these parties asked leave to intervene, alleging that they had a legal interest in the subject matter of the litigation. The motion was resisted by the plaintiff, Joaquin; and the court appears to have reserved its judgment until the final hearing.

By this time Jose Javier, the first intervener seems to have become discouraged; and on October 17, 1913, he requested leave of the court below to dismiss his complaint as intervener. The plaintiff announced his acquiescence in this step, but no action was taken thereon by the court. Later Javier reappeared upon the scene and requested leave to continue litigating. After this the activities of the litigants subsided and nothing worth recording occurred thereafter until the decision was rendered in the court below.

Before proceeding further we are constrained to make some comment upon the considerations which should govern the action of a court in passing upon a motion made by a stranger to an action to be admitted to intervene therein as an active litigant or as claimant of the thing which is the subject of the action; for we have before us a striking example of the disastrous results incident to an improper intervention. This record contains in one proceeding two fully developed lawsuits and others incidentally connected therewith. Whatever rights these different litigants had, with respect to the issuance of a cockpit license, could have been made fully effective in an action directed against the proper officials; and the right of one claimant was in no way related to that of the other. It is true that if either Joaquin or Javier had succeeded in vindicating his right to a license, this would have had the effect of excluding his opponent, because the ordinance did not permit more than one cockpit to be established in either of the two places where they were to be conducted. But this did not give either claimant a litigable

interest in the subject-matter of the contention of the other. To allow all aspirants for such a concession to intervene in an action brought by a single one is to overwhelm the court with a confused mass of unrelated pretensions and to jeopardize justice by crushing the litigants under an insupportable weight.

Section 121 of the Code of Civil Procedure clearly clothes the court with a discretionary authority to determine upon the propriety of granting leave for an outsider to intervene; and the solution of the problem in each case must depend on the nature of the controversy and the attitude of the litigants already before the court.

In considering this matter it may be noted that there are two different ends which may be in view as the object of the intervention. In one case the party desiring to intervene seeks to become a formal party, plaintiff or defendant, in the action; in the other he seeks to assert a right to the thing which is the subject-matter of the action, inconsistent with or superior to the claims of the actual parties. In this case the intervening party may have no interest in the contest between the original parties; and if he succeeds in asserting his right to the res, he will have no concern over the outcome of the litigation as regards them.

As regards the admission of new plaintiffs it may be laid down, generally, that persons claiming the same right as the plaintiff and who are admitted by the plaintiff to have a like interest with him in the action will usually be allowed to come into the suit to assist in the litigation and share in its expense. Here the proposed intervention of the new party is in aid of the action; and the step is permitted practically as a matter of course. However, before a party should be allowed to intervene as a coplaintiff, it must appear that he has an actual interest in the recovery sought. It is not enough that he has an independent right of action based on the same ground as that of the original plaintiff. (*Forest Oil Co. vs. Crawford*, 101 Fed., 849; 42 C. C. A., 54.)

The admission of new parties as active litigants presents a somewhat more serious problem where the parties desiring to be so admitted occupy a hostile attitude to the original plaintiff or seek to assert rights inconsistent with or superior to those of the parties of record. Such strangers, if they are to come in at all, must come in as defendants; and it is a rule that if the interests of the original parties would be seriously prejudiced by admitting them, they will not, as a rule, be admitted. The court will not admit new parties, whose purpose is to make trouble and resist the litigation, unless there are strong reasons for so doing. That a stranger to a suit will not be permitted, on his own application, and over the objection of the plaintiff, to become a defendant, is a well established rule to which there are but few exceptions. (*Shields vs. Barrow*, 17 How., 130, 145; 15 L. ed., 158, 162; *Chester vs. Life Association of America*, 4 Fed., 487, 489; *Toler vs. East Tennessee, etc. Ry. Co.*, 67 Fed., 168; *Anderson vs. Jacksonville, etc., R. Co.*, Fed. Cas. No. 358; 2 Woods, 628.) It has been said that the original plaintiff ought not to be forced into litigation with those not of his seeking. A person may begin a proceeding apparently simple in its nature and be content to take the risk of it. But if other persons can force themselves into the litigation, the proceeding may become complicated, expensive, and interminable. (*Gregory vs. Pike*, 67 Fed., 837, 845; 15 C. C. A., 33.) To permit the petitioner to be made a defendant is not a matter of strict right. It rests upon the judicial discretion of the court, and that discretion should only be exercised when thereby no substantial injury is done the plaintiff, and no unreasonable delay will result. A party whose rights can be fully protected in an independent original proceeding will not be admitted as a party defendant, where the proceedings incident to his admission would cause delay and prejudice the plaintiff. (*Toler vs. East Tennessee, etc. Ry. Co.*, 67 Fed., 168, 175; *Coffin vs. Chattanooga Water & Power Co.*, 44 Fed., 533.)

What has been said above relates to the introduction of new parties plaintiffs or defendants. We shall now speak of the case where the stranger desires to intervene for the purpose of asserting a property right in the res, or thing, which is the subject-matter of the litigation, without becoming a formal plaintiff or defendant, and without acquiring the control over the course of a litigation, which is conceded to the main actors therein. The mode of intervention to which reference is now made is denominated in equity procedure the intervention *pro interesse suo*

and is somewhat analogous to the trial of a right of property in an action at law, its purpose being to enable a person whose property gets into the clutches of a court, in a controversy between others, to go into court and to procure it or its proceeds to be surrendered to him. It often happens that a person who really owns property, or has a superior lien or other interest in it, sees a litigation spring up between others who assert rights in or concerning it. If the court takes possession of the res, or otherwise gets jurisdiction over it in such a controversy, the real owner is not compelled to stand idly by and see the property disposed of without asserting his rights. Though it be granted that the litigation would not be technically binding on him, because of his not being a party, yet it might well happen that complications would ensue whereby his rights would be materially prejudiced. For instance, the subject-matter of the litigation might consist of a fund to be distributed, and the conditions might be such that if it were turned over to the particular litigant who should appear to have the better right in the original action, the person really having a superior title might be left without redress. Accordingly provision is made whereby persons who have not been joined as parties in the original proceedings may intervene and assert their title. The intervener usually comes into the litigation to assert a right antagonistic or superior to that of one or both of the parties. (*Bosworth vs. Terminal etc. Assoc. of St. Louis*, 174 U. S., 182, 187, 43 L. ed., 941, 943.) As regards the right to intervene in this manner, it may be stated that if the party desiring to intervene shows a legitimate and proper interest in the fund or property in question, the motion to intervene should be granted, especially if such interest cannot be otherwise properly protected.

What has been said suffices to show that the right to intervene is based upon considerations which have reference in the first place to the necessity for the protection of property rights of strangers and in the second place to the convenient administration of justice; and it is clear that in the case before us these considerations were not sufficiently regarded.

Returning now to the incidents of the litigation before us, we find that when the cause finally came on to be heard in the Court of First Instance, the judge held that there was no merit in the contentions of any of the parties and turned them all out of court (April 22, 1914). But in order to conserve the interests involved until proper action could be taken by the municipal authorities to grant a cockpit license with the proper formalities, the injunction which had been issued on March 1, 1913, was continued in force until June 30, 1914. From this judgment both Joaquin and the last interveners, Lim and Limjap, appealed. The appellant Joaquin assigns error to the action of the court in cancelling the license issued to him in pursuance of the order of the Court of First Instance on March 1, 1913, and also in declaring of no effect the license issued to him by Leopoldo Ponciano on April 18, 1913. This appellant also assigns error to the action of the court in refusing to entertain his motion to assess the damages which he incurred between May 21, 1913, and June 29, 1913, by reason of the wrongful suing out of the injunction in the proceeding for a writ of certiorari.

The applicants Lim and Limjap have similarly assigned error to the action of the court in cancelling their license of July 2, 1913, and in refusing to assess the damages incurred by them by reason of the injunction granted upon July 10, 1913. To dispose of the last named litigants, first, we will say that the action of the court was, in our opinion, correct in "cancelling," or declaring of no effect, the license of July 2, 1913, and in refusing to assess damages on the bond given later upon the issuance of the injunction against Limjap. The claims of these parties were originally derived from Jose Javier, who upon January 30, 1913, executed an assignment purporting to transfer to them his rights to the concession. It is plain that the right to operate any business under a revenue license is a mere privilege which by nature is inherently unassignable. If the executive and administrative authorities, however, consent to the substitution of another person for the original licensee, nobody else would seem to have any right to complain. The municipal council did not in this case indicate its acquiescence in said transfer; and the transaction by which the assignment was effected was afterwards ignored by the parties themselves. By the instrument executed on March 10, 1913, a partnership was constituted, including the three as

members, for the purpose of exploiting the privilege which they hoped to acquire. It is evident that Lim and Limjap were the real parties in interest as they were supplying all the capital for the enterprise and had given the bond required for the cockpit license. The appellants Lim and Limjap apparently at no time had any particular establishment at their disposal which could have been used for cockpit purposes; and the municipal council of Caloocan never conceded to them or their predecessor Javier any concession or license for any particular place. The license issued on July 2, 1913, to Limjap was by its terms provisional and its value was dependant on the outcome of the present litigation. It is clear, therefore, that there is no merit in the contention of those parties that they were the rightful claimants to the cockpit privileges in question; and it follows that they are entitled to no damages by reason of the injunction of July 10, 1913.

As to the appellant Joaquin, we have already stated that he is entitled to no relief upon the facts which existed at the time the action was instituted. He did, however, acquire a title to relief by virtue of the license of April 18, 1913; and but for the fact that the period covered by it has passed, he would be entitled to a judgment in this court establishing his rights in respect to the enjoyment of that license.

The judgment of the court below must be reversed in so far as it purports to cancel and declare of no effect the license issued to Constancio Joaquin upon April 18, 1913; and it is now declared that he is entitled to recover the damages incurred by him by reason of the closing of his cockpits between May 21 and July 29, 1913, under the injunction which was issued upon the former date. The cause will therefore necessarily be remanded with instructions to the Court of First Instance to allow proof to be taken showing the extent of these damages and to enter judgment therefor against Jose Javier and the various sureties on his injunction bond according to their respective liabilities. The judgment is also reversed in respect to the provision contained therein for action by the municipal council of Caloocan on or before June 30, 1914, as that date has now passed. In other respects the judgment is affirmed without any special finding as to costs of this instance. So ordered.

Arellano, C. J., Torres, Carson, Araullo, and Malcolm. JJ., concur.

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