

SIMON CASTRO, PLAINTIFF AND APPELLEE, VS. TOMAS REYES AND THE MUNICIPALITY OF CAMILING, DEFENDANTS AND APPELLANTS.

G.R. No. 11326. October 20, 1917

Ponente: CARSON, J.

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CARSON, J.:

The evidence of record appears to sustain the findings of fact by the trial judge, and upon these findings we are of opinion that, with the modification hereafter indicated, the judgment entered by him should be affirmed. The various contentions of the appellants are sufficiently and satisfactorily disposed of in the opinion filed in the court below, except in so far as the judgment directs the defendant municipality to restore possession of the fishery in dispute in these proceedings.

It is admitted that the fishery is located within the territorial jurisdiction of the municipality of San Clemente, created and established since the institution of these proceedings, and it would seem, therefore, that the defendant municipality of Camiling, within whose boundaries it was located prior to the establishment of San Clemente should be presumed to have lost both the power and the intention to assert any claim to exercise that regard having passed by operation of law to the new municipality of San Clemente. It would seem, nevertheless, that the relief prayed for, so far as the right thereto is sustained by the evidence of record and recognized by the findings and conclusions of the trial court, will be adequately secured by the affiance of the judgment, after striking out therefrom so much thereof as provides for the restoration of possession by the defendant municipality, and for the payment of P50 a year by way of indemnity creation and organization of the municipality of Camiling from the date of the creation and organization of the municipality of San Clemente until possession is restored, leaving in full force and effect the judgment for possession against the defendant Tomas Reyes, who is in actual possession and fiction by the municipality of Camiling, down to the date.

We conclude that the judgment entered in the court below should be modified by striking out therefrom so much thereof as provides for the restoration of the fisheries in question by the defendant municipality of Camiling and so indemnification of P50 to be paid by the municipality from and after the date of the organization of the municipality that thus modified the judgment should be affirmed, with the cost of this instance against the defendant municipality. So ordered.

Arellano, C.J., Johnson, Aruallo, Street, and Malcolm, JJ., concur.

Judgment modified.

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