

**THE MUNICIPALITY OF MANGALDAN, PLAINTIFF AND APPELLEE,
VS. THE MUNICIPALITY OF MANAOAG, DEFENDANT AND
APPELLANT.***G.R. No. 11627. August 10, 1918*

Ponente: TORRES, J.

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On May 23, 1914, counsel for the municipality of Mangaldan filed a complaint in the Court of First Instance of Pangasinan against the municipality of Manaoag, alleging that from time immemorial it has been enjoying and using one-half of the water of the Tagumising River, that is, all the volume of water carried by the so-called Tolon River, a continuation of the former, which passes through the municipality of Manaoag; that, under an easement that for more than 30 years had existed in favor of the plaintiff, certain residents of Mangaldan have been enjoying the use of the water from the said Tagumising and Tolon Rivers for the purpose of irrigating their lands, but that, two years prior to the date above-mentioned, they were deprived of the use and enjoyment of the water of said rivers, by reason of the defendant's having obstructed the channel by means of a strong dam built at the confluence of the two rivers at a place between the localities of Tagumising and Tolon, thus obstructing the flow of the water; wherefore, the plaintiff municipality prayed the court to hold that it was entitled to use and enjoy the water carried by the so-called Tolon River, and further, that the court oblige the defendant to tear down the dam that it had constructed at the confluence of the Tagumising and the so-called Tolon Rivers, and to pay the costs.

The demurrer to the aforementioned complaint having been overruled by an order of July 22, 1914, to which the defendant excepted, the latter, in his answer, recognized the personality of the plaintiff and admitted that the channel of the Tagumising River lay partly within the municipality of Manaoag; and denied each and all of the allegations contained in the complaint. As a special defense he alleged that, even granting that the plaintiff had at any time a right to the water that flows through the Tagumising River, such right had already totally prescribed; and the defendant, therefore, prayed that the municipality of Manaoag be absolved from the complaint, with the costs against the plaintiff.

After the trial was held and the evidence adduced by both parties, the court, on the morning of May 2, 1915, attended by counsel for the litigants, by the municipal presidents of said municipalities and by the clerk of court, repaired to the vicinity of said river for the purpose of making an ocular inspection thereof and of the dam in the sitio of Amorboran. Said inspection disclosed that near and in front of the said dam there was a piece of land covered with an overgrowth of weeds which prevented the water of the river from reaching it, and, on its being carefully examined, some bamboo stakes were found there; these had some plant growth in their lower part, while their upper and front parts appeared to be covered with earth and sand overlaid with considerable under brush and a number of small trees; that at a distance of about 50 steps from the dam, there was a small pool of water and back of it the bed of the river was completely dry and had been filled in with earth and sand; and that in the part of the river between the dam and the pool of the water there was a fill that was higher than the river bed. During the inspection, counsel for the plaintiff called attention to the fact that, as the bed of the irrigation ditch named Canon

was of the same width as that of the Tagumising River, and that, as there was a current in the ditch, this latter took all the water of the river. It was also observed that the bamboo stake was quite new, and had not rotted notwithstanding that it had been under water. Counsel for the defendant called the court's attention to the alleged fact that a little farther down here was a laundering place, which indicated that there was water there; but when the place was examined, it was found out that the river bed was dry and there was neither any water nor a laundering place. This same counsel also noted that the earth on the dam was a deposit left there by the river current, as likewise the embankment behind the dam, earth, sand and driftwood, having accumulated there during a period of about 30 years, and that the part of the Tagumising River where there was a running water was lower than the dry part of the same river back of the dam, so that, even though the earth and sand deposit on the dam had been removed, it would have been difficult for the water to rise up to the level of the dry bed of the river.

In view of the foregoing, on August 2, 1915, judgment was rendered, whereby the municipality of Manaoag was ordered to remove the dam designated under letter A, in the condition in which it was then, and likewise the deposits of earth and sand that were in front of and behind said dam. The defendant was further ordered to construct in the same place a new dam, with branches of trees only, so that the surplus water might pass and be used by the inhabitants of Mangaldan, as it had been used by them for many years past. The defendant was also ordered to pay the costs. To this judgment, the defendant excepted and moved for a new trial. This motion was overruled, and the petitioner, after taking exception, filed the proper bill of exceptions, which was transmitted to the clerk of this court.

In this action, it is incumbent upon us to determine whether the water that flows through the river known by the names of Tagumising and Tolon, and whether this river itself having two names, belong to the public domain, and whether the people of the municipality of Mangaldan have, by prescription, the right to use and enjoy the water of that part of the said river known by the name of Tagumising, when it passes through the municipality of Manaoag, and of the part thereof known by the name of Tolon, where it crosses the municipality of Mangaldan.

The very witnesses presented by the counsel for the defendant municipality of Manaoag testified to the fact, which was proven, that the people of the municipality of Mangaldan had, for more than twenty years past, been using and enjoying the water that passed through the Tolon section of the river coming from the Tagumising section which crossed the municipality of Manaoag, although according to two of plaintiff's witnesses, Ulpiano de Vera and Jose Lopez Serafica, that water was taken for use, only during the rainy season from May of one year until January of the next.

Article 407 of the Civil Code provides that the following are of public ownership: 1. Rivers and their natural beds, etc.

Article 409 of the same Code provides:

"The use of public waters is acquired—

"1. By administrative concession.

"2. By prescription of twenty years.

"The limits of the rights, and obligations of these uses shall be those appearing, in the first case, from the terms of the concession; and, in the second, from the manner and form in which the waters have been used.

"Article 411 provides: The right to make use of public waters is extinguished by the forfeiture of the concession, and by nonuser for twenty years."

From these legal provisions it is concluded that the Tagumising River, as well as the water that flows through it and then passes through the Tolon River, which is a continuation of the Tagumising River, are of the public

domain. This is confirmed by article 33 of the Law of Waters of August 3, 1866, in force in these Islands. Therefore, the inhabitants of both Manaoag and Mangaldan have the same right to enjoy the use of this water, and the defendant municipality may not, to the prejudice of the inhabitants of Mangaldan, alter, modify, or reduce the water bed of the said river in the part thereof where it passes through the town of Manaoag; neither may the inhabitants of Manaoag impede the flow of the water of the Tagumising section of the river, so as to prevent its coming into the Tolon section of the stream, thus absolutely depriving the people of Mangaldan of said water.

The record does not contain even any circumstantial evidence that the Tagumising River had its source within the territory of the town of Manaoag, and it is to be believed that the water of the so-called Tagumising River came from places outside of Manaoag and from lands of higher altitude than those where the town of Manaoag stands, so that the people of Manaoag and those of Mangaldan only have the right to use and enjoy the water of the said river, which, as well as the river itself, is of the public domain, as already stated. Neither of these two municipalities has a right to monopolize the water of said river, especially that of Manaoag which is on a higher elevation, so that the water runs from the boundary of the municipality of Manaoag, eastward, toward the town of Mangaldan situated, westward, at a lower altitude.

Coming now to the errors assigned from the judgment appealed, we shall begin by stating that the municipality of Mangaldan was created and established in accordance with law, and is therefore vested with the character of a juridical entity entitled to bring suits and file complaints for the purpose of recovering any damages, losses, and injuries that may be caused to the community which it represents. A municipality is an association or corporation of public interest, endowed with a personality to acquire and possess all kinds of property, to contract obligations and bring civil and criminal actions in accordance with its governing organization. All the inhabitants of Mangaldan have been deprived of the use of the water that, coming from the Tagumising section of the river, flows through the Tolon section of the same, and it is natural that this municipality of Mangaldan should come out in their defense as being the true representative of the community and should exercise a legitimate right conducive to the removal of the obstacles that impede the flow of the water of said river, and thus avoid greater damages to its inhabitants.

With respect to the jurisdiction of the Court of First Instance of Pangasinan, it will suffice the purposes of this decision to state that this case does not concern the appropriation of public waters, the maintenance and operation of an irrigation system, or any of the other purposes referred to in Act 2152, nor the controversies referred to in section 3 of said Act, so that its section 4 can not be strictly applied. But the present case concerns the use and enjoyment of water of a river of the public domain, and also the rights acquired by the plaintiff, which rights must be respected by the defendant; hence, the orders overruling the demurrer is not erroneous.

If the water of the rivers called by the names of Tagumising and Tolon belong to the public domain, it is unquestionable that, while it passes through the section of the stream which crosses the town of Mangaldan, it may be used publicly by the inhabitants of this municipality, and the latter is by law entitled to defend the community comprising its inhabitants by compelling the recognition and respect of their rights, through the institution of such actions as may correspond to it as a legitimate representative of said community.

In the Ruling Case Law (vol. 19, sec. 345) the following doctrine is laid down: "A municipal corporation is the proper representative of the equitable rights of its inhabitants to the use of a public square, and is authorized to file a bill in equity to prevent the erection of a nuisance therein." If a municipality has the power to petition the courts for the abatement and removal of any nuisance in a public square, why can it not do the same when the nuisance is erected in a river whose water is of the public domain, and when such a nuisance obstructs or hinders the public use of the water, inasmuch as both the public squares and public waters come under the same classification of property for public use?

By the oral evidence and the plan, Exhibit A, it was only proven that dams had been erected, within both the municipalities of Manaoag and Mangaldan and in the river called by the double name of Tagumising and Tolon which crosses these municipalities from east to west; that for more than twenty years, the inhabitants of the town of Mangaldan had been enjoying the use of the water of said river in the part thereof called Tolon, and that they had been deprived of its use only a few years before when the interstices or small openings of the Manaoag dam were closed with earth and stones thus totally preventing the passage of the water. It further appears that the river bed beyond the Manaoag dam and just before the stream enters the territory of Mangaldan, had been raised, and that the water of the Tagumising section of the river, now diverted, passes through the irrigation ditch named Canon, as shown by the record of the ocular inspection made on May 2, 1915.

Notwithstanding the allegation made by counsel for the municipality of Manaoag, the herein appellant, that the court erred in recognizing and holding that the municipality of Mangaldan is entitled to use the water of the Tolon section of the Tagumising River, the record contains decisive oral evidence that both prior and subsequent to the year 1870, and until but a few years ago, the town of Mangaldan had been using such water from the Tagumising section of the river as was allowed to pass the Manaoag dam and continue its course through the Tolon section of said river, for, in the judgment rendered by the Court of First Instance of Pangasinan, on September 3, 1870 (record, p. 8), it was ordered that the residents of Mangaldan be restored to the enjoyment of the surplus water that escaped from the Manaoag dams in its course down river. It also appears from said judgment that the Manaoag dams were constructed of branches of trees and allowed the passage of a considerable volume of water which was used by the inhabitants of Mangaldan, and that the interruption of the flow of the water to and through the Tolon section of the river was due to the construction of a dam in the sitio of Mitura, for the reason that this dam was built in 1900 and the interruption in the flow of the water took place only in 1911, and was caused by the openings in the dam being filled with earth, sand, and brush.

Furthermore, the record contains no evidence whatever that the inhabitants of the town of Mangaldan had, for more than twenty years, ceased to use the water coming from the Tagumising River, for the interruption in the flow of that water began only seven years ago; so that, in accordance with the provisions of articles 409 and 411 of the Civil Code, the right acquired by them, through prescription, has not been extinguished.

Although the record does not satisfactorily show that the municipality of Manaoag filled in the bed of the Tagumising River in the vicinity of the dam constructed in said river, and although it is probable that the accumulation of earth in the river and in the dam was due to the force of the current of the water of the river itself, yet this would not relieve the defendant from its obligation to remove all the obstacles that obstruct the flow of the water, thus restoring the dam to its original state so that it may allow the water of the river to pass through its fissures and small openings, to the end that the people of Mangaldan may enjoy the use of this water, to which they have a right by reason of the fact that the Tagumising section of the river and the water which flows over its bed belong to the public domain, and no one has a right to monopolize them for his exclusive benefit and to the prejudice of others who have the same right. The existence of the dam or dams in the Tagumising River which benefit the inhabitants of the town of Manaoag by their enjoyment of the water of public use, implies the obligation to maintain and preserve the said dam or dams in proper condition so that any alteration or change may not cause injury to the residents of other towns.

For the foregoing reasons, whereby the errors assigned from the judgment appealed have been refuted, and, said judgment being in accordance with law and in conformity with the evidence of record, should be, as it hereby is, affirmed, with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, and Avanceña, JJ., concur.

DISSENTING OPINION

FISHER, J., dissenting:

I dissent. It having been expressly admitted at the trial that the damages alleged to have been sustained affect only private individuals and not the municipality as a corporation, it appears obvious to me that the plaintiff lacks the requisite personality.

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