

CASIMIRO JAPCO ET AL., PLAINTIFFS AND APPELLEES, VS. THE CITY OF MANILA ET AL., DEFENDANTS AND APPELLANTS.

G. R. No. 24584. March 08, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

On March 26, 1924, the Municipal Board of the City of Manila passed Ordinance No. 1181 providing for the collection of a fee of 5 centavos on each kilogram of meat from animals slaughtered in the matadero of the city. The plaintiffs, whose business was adversely affected by the ordinance, brought this action to have it declared null and void on the ground that it had not been published in two daily newspapers of general circulation as provided by section 2443 of the Administrative Code. At the time of the filing of the complaint, May 3, 1924, a preliminary injunction was issued restraining the city from enforcing the ordinance. On September 29, 1924, the court below rendered a decision in which it found that the ordinance had been duly published in the Official Gazette and in conformity with the decision of this court in the case of *Rodriguez vs. City of Manila* (46 Phil., 171), held that such publication was sufficient and ordered that the preliminary injunction be dissolved and the complaint dismissed without costs.

On December 31, 1924, over three months after the rendition of the judgment, the defendants filed a motion setting forth that under the facts stated in the decision of the court, the City of Manila had suffered losses at the rate of P253.78 per day for the period from May 3, 1924, the date of the issuance of the preliminary injunction, until September 30th, the date on which the city was notified of the decision of the court, the total amount thus being P38,067, for which the movants prayed that a writ of execution issue against the plaintiffs jointly and severally. This motion was denied on January 6, 1925, on the ground that the decision in question contained no judgment for damages susceptible of execution.

On January 16, 1925, the defendants excepted to this order and asked that a date be set for the defendants to present their evidence to establish the actual amount of damages caused the city by the issuance of the preliminary injunction in order that the corresponding judgment might be rendered in its favor. On the 26th of the same month, the court granted the motion and set the case down for the reception of evidence in regard to damages.

Upon motion of the plaintiffs dated February 11, 1925, the court, on the 28th of the same month, issued an order revoking the order of January 26th on the ground that there being no judgment for damages and the motion for the determination of such damages having been filed after the original decision had become final, the defendants had lost their right to a judgment for such damages. Motions for reconsideration and a new trial were subsequently denied and the defendants appealed to this court. The questions presented for our determination are raised by the appellants' first two assignments of error which read as follows:

"The lower court erred:

"I. In denying the motion of the defendant City of Manila dated December 26, 1924, for the issuance of a writ of execution against the plaintiffs and their sureties for the sum of P38,067, the amount of the damages

suffered by said city by reason of the issuance of the preliminary injunction in this case.

"II. In setting aside the order setting this case for hearing on February 4, 1925, at 10 a. m. for the purpose of giving the city an opportunity to prove the damages suffered by it, in accordance with the order of said court dated January 26, 1925."

As to the first assignment of error it would seem sufficient to quote the final or dispositive clauses of the decision rendered in the case by the court below on September 29, 1924, and which set forth the judgment to be entered:

"The parties having stipulated that the publication of Ordinance No. 1181, the validity of which is in question in this case, was made in the manner prescribed by Act No. 2930, said publication is, as hereby declared, legal and valid, and therefore it must be, as is hereby ordered, that the preliminary injunction issued in this case be dissolved, and the defendants absolved from the complaint with the costs de oficio.

"The bond in the sum of P1,000 given by the plaintiffs for the issuance of the aforesaid writ of preliminary injunction shall answer for the damages caused to the City of Manila by reason of the issuance thereof."

It will be readily seen that there is nothing in this judgment upon which an execution for damages might issue. It is true that in its decision the court quotes certain stipulations of fact in which it appears that the city, through the issuance of the preliminary injunction, was prevented from collecting revenues to the amount of P253.78 per day during the period the injunction remained in force, but that is merely a statement of a fact and is not in itself a judgment (see 15 R. C. L., 570).

But the defendants argue that the last clause in the judgment providing that the bond given by the plaintiffs for the issuance of the preliminary injunction should be held to respond for the damages caused the City of Manila, clearly indicates an intention on the part of the court to award damages and its decision containing all the data necessary for the determination of the amount of such damages, the intention of the court should be given effect and its findings as to the losses regarded as a part of the judgment.

This contention is untenable. The daily losses in revenue collections was, of course, an element to be taken into consideration in awarding damages, but there is nothing to show that the court intended to rely upon that element exclusively and to make the award without further hearing. The cases cited by the appellants relate only to defects in the drafting or preparation of judgments and are not in point; this is not a question of correction of clerical errors. The appellants' second assignment of error is equally unmeritorious and is fully disposed of by the decision in the case of Santos vs. Moir (36 Phil., 350), in which this court said: " * * * While it is true that, even though a judgment in the principal cause has been duly entered, the court still has power to open that judgment for the purpose of including in it the damages caused by the execution of the injunction order, nevertheless, the court can do so only while the judgment remains within its control. * * * "

In the present case the motion to set the case down for hearing for the determination of the damages was filed on January 16, 1925, over two months after the judgment in the principal cause had become final and had passed beyond the control of the court. Under section 170 of the Code of Civil Procedure, damages for the issuance of a preliminary injunction must be determined in the principal action and judgment therefor must be included in the final judgment of the case; this remedy has been held to be exclusive and by failing to file a motion for the determination of the damages in time, the defendants have lost their right to such damages (Santos vs. Moir, supra; see also Somes vs. Crossfield, 9 Phil., 13, and Macatangay vs. Municipality of San Juan de Bocboc, 9 Phil., 19).

The orders appealed from are affirmed without costs in this instance. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Johns, and Villa-Real, JJ., concur.
Romualdez, J., did not take part.

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