

MARIANO MACATANGAY, PLAINTIFF, VS. THE MUNICIPALITY OF SAN JUAN DB BOCBOC OF THE PROVINCE OF BATANGAS, DEFENDANT.

G.R. No. 4057. October 09, 1907

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 28th day of May, 1907, the plaintiff presented in this court a petition praying for a writ of certiorari and an injunction. On the same day the injunction was issued in accordance with the prayer of the petition, after the plaintiff had given a bond in the sum of P1,500, signed by Jose Argtielles and Francisco Y. Goyena, which was duly approved.

On the 21st day of June, 1907, the Attorney-General of the Philippine Islands, representing the defendant municipality, presented a motion praying that the injunction be dissolved, and that the defendant have and recover of and from the plaintiff, under his bond, the damages and costs which the defendant has been put to by reason of said injunction.

On the 27th day of June, 1907, after considering the grounds upon which the motion to dissolve were based, the said injunction was dissolved.

On the 21st day of June, 1907, the Attorney-General presented a demurrer to the complaint filed in said cause.

On the 26th day of September, 1907, the said Attorney-General gave notice that the demurrer filed in said cause would be brought for hearing before this court on the 7th day of October, 1907.

On the 30th day of September, 1907, the plaintiff filed a motion asking that the said cause be dismissed, and on the same day the said Attorney-General presented the following motion:

"And now comes the above-named defendant and moves the court that before the dismissal of the said cause in accordance with the motion of the plaintiff made therein on the 30th day of September, 1907, the court, by order, refer the said action to the Court of First Instance of the Province of Batangas for the purpose of ascertaining and reporting to this court the amount of damages which the defendant has sustained by reason of the granting of the injunction, in the above-entitled action; and that upon the return and confirmation of such report by this court, final judgment be entered, dismissing such action and assessing the amount of such damages against the plaintiff and surety on the undertaking given by the plaintiff herein."

Upon a consideration of the motion of the plaintiff to dismiss his action, the same is granted, without prejudice to the right of the defendant to present in this court specifications, in the nature of a complaint, setting forth the grounds relied upon for the purpose of recovering damages against the plaintiff, before final judgment is entered dismissing the said cause, in accordance with the ruling of this court in the case of *Somes vs. Crossfield et al.* (5 Off. Gaz., 462).

The Attorney-General in his motion asks that this court order the said cause to be referred to the Court of First

Instance of the Province of Batangas for the purpose of ascertaining and reporting to this court the amount of damages which the defendant has sustained by reason of the granting of the said injunction. The defendant is entitled to have the amount of his damages ascertained and to have them included in the final judgment in said cause, but section 170 of the Code of Procedure in Civil Actions provides that said damages shall be ascertained by the court in which the action is pending. The present was an original action in this court; therefore it is the order of this court that the defendant file, in this court, within a period of ten days after the receipt of notice of this order, specifications, in the nature of a complaint, setting forth the grounds relied upon for the purpose of recovering damages against the plaintiff and his bondsmen, by reason of the granting of the said injunction, and to serve a copy of these specifications upon the plaintiff and the said bondsmen. So ordered.

Arellano, C. J., Torres, Carson, Willard, and Tracey, JJ., concur.

[1] 8 Phil. Rep., 284.

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