

**DONATO C. GUZMAN AND MINORO TAMASHIRO, IN THEIR OWN
BEHALF AND IN BEHALF OF ALL OTHERS HAVING A COMMON OR
GENERAL INTEREST IN THE SUBJECT MATTER OF THIS ACTION,
PLAINTIFFS AND A...**

G.R. No. 43626. March 07, 1938

Ponente: IMPERIAL, J.

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IMPERIAL, J.:

This is an appeal taken by the plaintiffs from the decision of the Court of First Instance of Palawan sustaining the legality and validity of ordinance No. 1, series of 1933, enacted by the municipal council of Taytay, of the said province, ordering them to pay the defendant Roman Santos, jointly and severally, the sum of twenty thousand (P20,000) pesos and setting aside the preliminary injunction issued therein.

The action was brought by the plaintiffs to annul the aforesaid municipal ordinance as well as the exclusive privilege of fishery issued to Roman Santos under said ordinance and to enjoin the defendants from fishing in the Malampaya Sound. The plaintiffs' complaint alleged: That the first, Donato C. Guzman, is the holder of a license to operate fishing motor vessels and the second, Minoro Tamashiro, of a fisherman's license, both issued by the Secretary of Agriculture and Commerce pursuant to Act No. 4003 of the Philippine Legislature; that on January 30, 1933, the Municipality of Taytay, Province of Palawan through the municipal council, enacted and approved municipal ordinance No. 1, which authorizes the lease of the Malampaya Sound at public auction and the granting of the exclusive privilege of fishery therein; that by virtue thereof the aforesaid municipality granted to the defendant the exclusive license to fish in the Malampaya Sound for the period of five years; that as a result of the issuance of the exclusive license, the plaintiffs and many other fishermen with licenses' to fish in Philippine waters, issued by the Secretary of Agriculture and Commerce, have been deprived of their right to fish in the aforesaid Sound and have been actually prevented and molested by the said grantee in the exercise of their right to fish therein, having been informed against for alleged violation of the said ordinance; that ordinance No. 1 of the municipality of Taytay is illegal and void because the said municipality was without power to enact it, and that the exclusive license granted to the defendant Santos is ultra vires because the municipal council of Taytay which authorized it acted beyond its legal powers. As remedies the plaintiffs asked that the ordinance be declared illegal and void, that a writ of preliminary injunction be issued against the defendants, and that the same be made permanent. The municipality of Taytay and Roman Santos filed answers to the complaint, wherein they denied generally and specifically the allegations thereof and by way of special defense alleged that ordinance No. 1 and the exclusive fishing license granted in accordance therewith are legal and valid; and the defendant Roman Santos, moreover, interposed a counterclaim against the plaintiffs alleging that he suffered damages in the sum of twenty-thousand (P20,000) pesos, being the value of the fish which the former caught in the Malampaya Sound and appropriated for themselves, and a cross-complaint wherein he also alleged that he suffered and continues to suffer irreparable losses as a result of the issuance, at the instance of the plaintiffs, of the writ of preliminary injunction which permits the latter to continue fishing in the said bay.

The plaintiffs having posted a bond, which was subsequently raised to twenty thousand (P20,000) pesos, the clerk of the Court of First Instance of Palawan, complying with the order issued by a Justice of the Supreme Court, issued a writ of preliminary injunction addressed to the defendants, restraining them and their agents from enforcing the questioned ordinance and the exclusive fishing license issued in favor of Roman Santos and, likewise, from preventing the plaintiffs to fish in the Malampaya sound, until further order. After trial the court entered the appealed decision mentioned at the beginning hereof.

At the trial, wherein only the plaintiffs and the defendant Roman Santos and their respective attorneys appeared, said parties agreed upon the following facts:

"1. That the plaintiffs Donato C. Guzman and Minoro Tamashiro are holders of a license to operate motor vessels and a fisherman's license, respectively, issued by the Department of Agriculture and Commerce for purposes of commercial fishing within the jurisdictional waters of the Philippines, dated August 15, 1933 and September 4, 1933, respectively.

"2. That the fisherman's license issued in the name of Minoro Tamashiro on August 15, 1933 is a new fisherman's license, that is, a new fisherman's license issued for the first time by the Department of Agriculture and Commerce, Fish and Game Administration, within the jurisdictional waters of the Philippine Islands in favor of the said fisherman Minoro Tamashiro.

"3. That the plaintiffs and the defendant Roman Santos are agreed on the standing of the plaintiffs Donato C. Guzman and Minoro Tamashiro as well as that of the defendant Roman Santos.

"4. That the municipality of Taytay, Province of Palawan, on January 30, 1933, enacted municipal ordinance No. 1, series of 1933, which ordinance provides for the holding of a public auction to grant the exclusive right to fish in the place known as Malampaya Sound, within the jurisdiction of the municipality of Taytay, Palawan.

"5. That pursuant to ordinance No. 1 of Taytay, the said municipality of Taytay, Palawan, granted to the defendant Roman Santos the exclusive privilege to fish in the Malampaya Sound within the jurisdiction of the said municipality, the said Roman Santos being the highest bidder, having offered the payment of the sum of five thousand one hundred (P5,100) pesos per annum for the period of five years from April 20, 1933.

"6. That the defendant Roman Santos has paid the agreed amount of five thousand one hundred (P5,100) pesos by way of tax for the privilege to fish in Malampaya corresponding to the year 1933, and the said Roman Santos has likewise deposited with the clerk of the Court of First Instance of Palawan by telegraphic transfer the sum of five thousand one hundred (P5,100) pesos on December 29, 1933, as per official receipt issued by the post office in Manila, No. A-856681, attached to this case as Exhibit 8.

"7. That the plaintiffs had been duly notified by the corresponding authorities of the municipality of Taytay of the existence of ordinance No. 1 of said municipality and of the granting of the right to fish in Malampaya Sound in favor of the herein defendant Roman Santos; but notwithstanding said notice the plaintiffs and other Japanese fishermen continued to fish in May until the middle of July, 1933.

"8. That on or about June 28, 1933, one of the occasions when the Japanese fished in Malampaya Sound, the Japanese Minoro Tamashiro, one of the plaintiffs in this case, and one Anacleto Brual, were arrested and charged before the justice of the peace court of Taytay with a violation of ordinance No. 1 of said municipality, consisting in having caught fish and taking away on the motorboat Calapan seventy (70) baskets of fish commonly known as 'hasa-hasa' valued at seven hundred (P700) pesos; and that the herein plaintiff Minoro Tamashiro made a statement under oath before the municipal president of Taytay on June 29, 1933, which statement is attached to this case marked as Exhibit 9, being criminal case No. 119 of the justice of the peace court of Taytay, and that the said complaint was temporarily dismissed by the justice of the peace court of Taytay, as per order attached to this case as Exhibit J, dated September 22, 1933.

"9. That on or about May 21, 1933, a complaint was likewise filed for violation of ordinance No. 1 of the municipality of Taytay, before the justice of the peace court of said municipality, against Kami Tamashiro, another Japanese fisherman, for having caught in Malampaya Sound two hundred (200) baskets of fish, commonly known as 'hasahasa' and taken away the same on his motorboat Manila, valued at two thousand (P2,000) pesos; and that on the same date, May 21, 1933, Kami Tamashiro stamped his thumbmark on a statement attached to criminal case No. 120 of the justice of the peace court of Taytay, which statement is attached to this case as Exhibit 10; and that on November 10, 1933, on petition of the municipal treasurer of Taytay, the justice of the peace court temporarily dismissed the complaint with costs de oficio, as per order marked Exhibit K for purposes of identification.

"10. That on February 5, 1934, the municipal council of Taytay, Palawan, approved resolution No. 5 defining the meaning of the phrase 'exclusive privilege of fishery' used in municipal ordinance No. 1 of March 30, 1933, which resolution is attached to this case and marked as Exhibit 11 for purposes of identification.

"The parties stipulate and agree that the testimony of witness, Felix Franco, assistant chief of Fish and Game Administration, of the Department of Agriculture and Commerce, relative to the amount of fish caught by boats Lubang II and Calapan in the vicinity of Palawan, during the period from June to December, 1933 and the value thereof, have been taken from the weekly reports of the checkers in the office of the Fish and Game Administration for the same period. The parties also agree that the fishing boat Calapan of Donato C. Guzman has been duly licensed for the commercial fishing in the Philippine waters by the Department of Agriculture and Commerce under date of August 23, 1933 and that the license fee for the said license was paid on April 10, 1933 by the said Donato C. Guzman to the Fish and Game Administration, Department of Agriculture and Commerce. (Exhibit L, pp. 14, 15.)"

The said parties also stipulated that resolution No. 5, dated February 5, 1934, mentioned in clause 10 of the stipulation of facts, has been approved by the provincial board of Palawan on February 21 of the same year, according to a telegram of the provincial governor, marked, as Exhibit 14.

Apart from the stipulation of facts, it has been established that the Malampaya Sound is navigable and that in area it is 19 miles long towards the southeast, and 2 1/4 miles wide, it being accessible to the largest ocean vessels.

Ordinance No. 1, series of 1933, is fully reproduced as follows:

"THE MUNICIPAL GOVERNMENT OF TAYTAY
"PALAWAN, P. I.

"MINUTES OF THE REGULAR MEETING OF THE MUNICIPAL COUNCIL OF TAYTAY, PROVINCE
OF PALAWAN, P. I., HELD
AT TAYTAY, ON JANUARY 30TH, 1933.

"[MUNICIPAL ORDINANCE NO. 1]

"MUNICIPAL ORDINANCE PROVIDING FOR THE LEASE OF THE MALAMPAYA SOUND BY
PUBLIC AUCTION FOR THE PERIOD OF FIVE YEARS UNDER THE PROVISIONS ON THE FISHERY
LAW NO. 4003, OF THE PHILIPPINE LEGISLATURE.

"By virtue of Act No. 4003 of the Philippine Legislature, the Municipal Council of Taytay, Province of Palawan, P. I., decrees:

"Section 1. Title of the ordinance.—This Municipal Ordinance shall be entitled 'The Exclusive Privilege of Fishery in the Malampaya Sounds'.

"Sec. 2. Public auction and duration of the privilege.—

That the privilege to fish in the Malampaya Sounds shall be done by public auction. To the winning bidder at said auction will be granted the exclusive right to fish within the limits fixed in said sound, as prescribed in Sec. 8 of this Ordinance for a period of five years from April 20, 1933 until December 31, 1937. Provided, That for the purposes of this ordinance, from April 20, 1933, to December 31, 1933, shall be considered as a full year.

"Sec. 3. Rate.—The minimum rate of this auction is from P4,020 a year upwards.

"Sec. 4. Place and time of auction.—The public auction shall take place in the office of the Municipal Treasurer of Taytay, Palawan, P. I., on April 20, 1933, at 10 a. m., at which, in the presence of the bidders and their representatives the said treasurer shall open all the sealed proposals and the result thereof shall be adjudicated to the bidder who makes the most advantageous offer to the Government.

"Sec. 5. Proposals.—The proposals shall be sent to the address of the Municipal Treasurer of Taytay, Palawan, P. I., in sealed envelopes registered by the Post-Office and shall be accompanied by 25 per cent of the amount of the offer. The envelopes shall be marked with the following words: 'Offer for the auction of the privilege of fishery in Malampaya on April 20, 1933, 10 a. m.' If the guaranty of 25 per cent accompanying each offer is not in Philippine currency or notes, the money orders or checks shall be drawn in favor of the Municipal Treasurer of Taytay, Palawan, or shall be duly endorsed to the said Treasurer.

"Sec. 6. Effectiveness of payments.—(All payments shall be made by the year. The first payment shall be made to the municipal treasurer of this municipality within thirty days from the adjudication of the auction, and the following payments shall be made within the first twenty days of January every year, for a period of five years, that is, up to 1937, as provided in sec. 2 of this Ordinance.

"Sec. 7. Right to Fish.—During the effectiveness of this ordinance with the exception of the lawful party contratant under this ordinance, no person shall have a right to fish within the Malampaya Sound; Provided, however, that the inhabitants living within the jurisdiction of this municipality of Taytay, shall not be deprived or molested if they only fish for domestic purposes.

"There shall also be exempted from the restrictions of this ordinance the persons who fish within the said Malampaya Sound for scientific or recreational purposes.

"Sec. 8. Boundaries.—The two Sounds of Malampaya shall have for boundaries from the Liminangcon Canal fronting the barrio of the same name, on the North, extending to the mouth of Bulalo including all the Rivers, turns, inlets within the two Sounds of Malampaya.

"Sec. 9. Limitations.—Any poisonous substance, apparatus, traps and other artifices which are prohibited by Act No. 4003 are likewise expressly prohibited from being used in the catching of fish.

"Sec. 10. Contracts.—For the purposes of this Ordinance, the municipal treasurer of this municipality shall be authorized, as he is hereby authorized, to draw up contracts which shall be duly signed by the lucky bidder and acknowledged by a notary public, in which shall appear the strict compliance with the terms and obligations by the contractor to the Government.

"Sec. 11. Equal Offers.—If at the time the auction is declared open there should be a tie in the offers, the treasurer shall notify the applicants and bidders present at the auction of this fact, who shall then be authorized to draw lots among the bidders whose bids result in a tie and the auction shall be adjudicated in favor of the lucky bidder: Provided, however, That should there be only two offers at the auction which result in a tie, and it appears that one of them belongs to a bidder from the province, the preference shall be given in favor of the latter.

"Sec. 12. Publications.—The municipal treasurer of this Municipality is also authorized to make and publish notices of the auction provided in sec. 4 of this ordinance in the Official Gazette and in newspapers of general circulation in the Philippines twice a week for a period of six consecutive weeks. Copies of said notices shall

be posted by the municipal policemen of this municipality in the most conspicuous places thereof and in all, the barrios within the jurisdiction of the municipality of Taytay, Palawan. The municipal treasurer is also ordered to furnish the Office of the provincial governor and provincial treasurer of this province, as well as all the municipal treasurers of the Province with copies of the notice.

"Sec. 13. Power of the municipal treasurer.—The municipal treasurer of this municipality is empowered to reserve the right to decline any or all propositions or to let pass any defect and accept propositions which the said Treasurer deems advantageous for the Government.

"Sec. 14. Bond.—The highest bidder at the public auction under the provisions of this ordinance shall be obliged to put up a bond for an amount equal to one year of his offer with two or more solvent persons, or by means of checks issued to the municipal treasurer of Taytay, Palawan, which shall be deposited by said treasurer in the provincial treasury of this province: Provided, however, That the bond shall be renewed from year to year.

"Sec. 15. Penalties.—Any person or persons who violate the provisions of this Ordinance, shall pay a fine in a sum not less than fifty pesos, nor more than two hundred pesos, and In case of insolvency, shall suffer subsidiary imprisonment for not less than two months nor more than six, or both, at the discretion of the court.

"Sec. 16. Expenses of publication.—For the publication of the notice of the auction, as provided in sec. 12 of this Ordinance, there is hereby appropriated the sum of P100 to be defrayed by the municipal treasurer, of this municipality, for all the expenses of said publication.

"Sec. 17. Repealing clause.—Any ordinance incompatible with the provisions of this Ordinance, is hereby repealed.

"Sec. 18. Effectiveness.—This Ordinance shall take effect on February 11, 1933.

"Unanimously approved."

The plaintiffs assign, as errors committed by the court, the following:

"I. The lower court erred in declaring municipal ordinance No. 1, series of 1933, of the municipality of Taytay, Province of Palawan, valid and legal. II. The lower court erred in not declaring the lease of the exclusive privilege of fishery in Malampaya Sound granted the defendant-appellee, Roman Santos, under the provisions of said municipal ordinance No. 1, series of 1933, ultra vires and void. III. The lower court erred in condemning the plaintiffs-appellants, Donato C. Guzman and Minoro Tamashiro, jointly and severally to pay the defendant-appellee, Roman Santos, the sum of twenty thousand pesos (P20,000) as damages. VI. The lower court erred in denying the plaintiffs-appellants' motion for a new trial."

Considering the view that we have taken of the case, the only questions that we have to resolve are: First, whether the questioned ordinance is legal and valid; second, whether the exclusive privilege of fishery granted to the defendant Santos is likewise legal and valid, and, third, in case the first two questions are answered affirmatively, whether the evidence warrants that the plaintiffs be ordered to pay the sum of twenty thousand (P20,000) pesos as damages.

- In their respective briefs the plaintiffs contend that the municipality of Taytay is without power under the law to enact the ordinance in question, nor to grant the exclusive privilege therein provided, while the defendant Santos contends otherwise. This controversy requires us to examine the applicable legal provisions, in order to find out if there is any which authorizes municipalities regularly organized to lease, exclusively and for fishing purposes, waters within their jurisdiction, and to grant exclusive privileges. The laws directly bearing on the matter are sections 2321, 2323 and 2324 of the Administrative Code, as recently amended, and sections 21, 67, 69, 70 and 84 of Act No. 4003, also known as the Fisheries Act, reading as follows:

"Sec. 2321. Grant of fishery.—A municipal council shall have authority, for purposes of profit, to grant the exclusive privilege of fishery or right to conduct a fish-breeding ground within any definite portion, or area, of the municipal waters.

""Municipal waters,' as herein used, includes not only streams, lakes, and tidal waters included within the municipality, not being the subject of private ownership, but also marine waters included between two lines drawn perpendicular to the general coast line from points where the boundary lines of the municipality touch the sea at high tide, and a third line parallel with the general coast line and distant from it three marine leagues.

"Where two municipalities are so situated on opposite shores that there is less than six marine leagues of marine waters between them the third line shall be a line equally distant from the opposite shores of the respective municipalities."

"Sec. 2323. Restriction upon letting of fishery to private party.—When a fishery or fish-breeding ground is granted to a private party as hereinabove authorized, the same shall be let to the highest bidder in the manner and subject to the conditions prescribed in section two thousand three hundred and nineteen hereof.

"Sec. 2324. License tax upon taking of fish in municipal waters.—Where a municipal council has not granted the exclusive privilege of fishery in municipal waters, it may impose a license tax upon the privilege of taking fish in such waters with nets, traps, or other fishing tackle; but no such license shall confer an exclusive right of fishery."

"Sec. 21. License for offshore fishing not precluding municipal grant of fishery.—The granting of licenses to operate vessels for the catching of fish shall not preclude the rights of municipal councils to grant the exclusive privilege of erecting fish corrals or operating fishponds in any definite zone or area within three nautical or geographical miles from the coast line: Provided, That the catching of fish by vessels of more than three tons gross within the boundaries of municipal waters shall be subject to the requirements of this article: Provided, further, That no license granted hereunder shall operate within two hundred meters of any fish corral licensed by a municipality, except if the licensee is the same person authorized by the municipality to operate such fish corral."

"Sec. 67. Grant of fishery.—A municipal council shall have authority, for purposes of profit, to grant the exclusive privilege of erecting fish corrals or operating fishponds within any definite portion, or area, of the municipal waters, as defined in article two of this Act, to any citizen of the Philippine Islands or of the United States, or any association or corporation of which at least sixty-one per centum of the capital stock or of any interest in said capital stock belongs wholly to citizens of the Philippine Islands or of the United States and which is organized and constituted under the laws of the Philippine Islands or of the United States or of any States thereof and authorized to transact business in the Philippine Islands, or to any citizen of any country the laws of which grant similar rights to citizens of the Philippine Islands: Provided, however, That all foreign persons, associations or corporations who, at the time this law goes into effect, have legally obtained a municipal grant, license or permit to erect fish corrals or operate fishponds within municipal waters, may be granted renewals of such grants, licenses or permits so long as they have not been guilty of any violation of this Act, Article XXI of Chapter fifty-seven of Act Numbered Twenty-seven hundred and eleven, known as the Administrative Code, or the regulations promulgated thereunder: Provided, also, That no individual, association or corporation granted a municipal grant, license or permit shall be authorized to transfer or assign its or his interest or sell its or his stock directly or indirectly to persons, associations or corporations not qualified to hold a municipal grant, license or permit under the terms of this chapter, under penalty of forfeiture of its or his grant, license or permit: Provided, further, That a transfer made by a stockholder or member of an association or corporation of his stock or interest in violation of the provisions hereof shall not be cause of the forfeiture of the grant, license or permit of such association or corporation, but said transfer shall be null and void and shall not be registered in the books of such

association or corporation."

"Sec. 69. Restriction upon letting of fishery to private party.—When the privilege to erect fish corrals or operate fishponds is granted to a private party as herein above authorized, the same shall be let to the highest bidder for the period of not to exceed five years, or upon the previous approval of the provincial board, for a longer period not exceeding twenty years, under such conditions as shall be prescribed by the Secretary of Agriculture and Natural Resources.

"Sec. 70. License tax upon taking of fish in municipal waters.—A municipal council which has not granted the exclusive privilege of erecting fish corrals or operating fishponds in municipal waters, may impose a license tax upon the privilege of taking fish in such waters with nets, traps, or other fishing tackle, upon persons qualified according to section sixty-seven hereof, except those already licensed under article five of this Act: Provided, That no such license shall confer an exclusive right of fishery; that the imposition of this license tax upon this privilege shall be levied only once in any given year upon any fisherman; that the levy is to be made by the municipality wherein the fisherman is a resident; and that the possession and exhibition of receipts evidencing payment of the license tax shall entitle the fisherman to fish in any municipal waters in the Philippine Islands, in which the exclusive privilege of fishery has not been granted to any other person or persons: Provided, however, That in case the fee in the municipality where the fisherman desires to fish is greater than the fee in the municipality where he obtained his license, the former municipality may collect from him the difference between the two fees."

"Sec. 84. Repealing clause.—All acts, administrative orders and regulations, or parts thereof, inconsistent with the provisions of this Act, are hereby repealed."

There is no doubt that, under section 2321 of the Revised Administrative Code municipalities had power to grant exclusive privileges of fishery and to conduct fish-breeding grounds, for profit, within the zone or area of the municipal waters, wherefore, in the case of *Municipality of San Luis vs. Ventura and Castillo* (56 Phil., 329), we held that: "Section 2321, then, authorizes the municipality to grant the exclusive privilege of fishery or the right to conduct a fish-breeding ground within any definite portion, or area, of the municipal waters. Granting the exclusive privilege of fishery means that the grantee uses his privilege to the exclusion of everybody else; so that when a person or entity has obtained an exclusive privilege of fishery or right to conduct a fish-breeding ground within any definite portion, or area, of the municipal waters, no other person or entity may fish within that definite portion or area. (*U. S. vs. Hernandez*, 31 Phil., 342.) * * * There is no question that the municipal council of San Luis is authorized by law to grant to any private party the exclusive privilege of fishery in a definite portion, or area, of the waters of the municipality. Neither is there any question that the municipal council is empowered to regulate fishing within the municipal waters under its jurisdiction. In *United States vs. Hernandez*, supra, it was held: The right to engage in fishing is a common and general one, but it can be regulated by a municipal corporation under a provision of law or authority granted by the Legislature, being in this case a delegation of the state's authority to the municipality. By virtue of such authority a municipality may also grant to the inhabitants thereof the exclusive right to fish in the sea within its municipal boundaries."

But the point to be decided now is whether the said section 2321 is still in force, or whether, on the contrary, it has been amended or repealed by the Fisheries Act. This law, as its title indicates, has been enacted by the Philippine Legislature to amend and compile all the laws relating to fishery and other sources of aquatic wealth. Its section 67, falling under Chapter III regarding municipal fisheries, and Article XI which speaks of the granting of fisheries, provides that municipal councils shall have authority, for purposes of profit, to grant the exclusive privilege of erecting fish corrals or operating fishponds within any definite portion, or area," of the municipal" waters; and section 21 confirms the same authority in providing that the granting of licenses to operate vessels for

the catching of fish shall not preclude the rights of municipal councils to grant the exclusive privilege of erecting fish corrals or operating fishponds. The first paragraph of section 2321 and the first part of section 67 contain legal provisions in pari materia, because both refer to the granting by municipal councils of the privilege of fishery within the municipal waters and waters within their zones or areas, and being inconsistent with one another, the latter should be interpreted as impliedly repealing the former (*Henrietta Min., etc., Co. vs. Gardner*, 173 U. S., 123; *U. S. vs. Tynen*, 11 Wall., 88; *Summers vs. Atchison, etc., R. Co.*, 2 F. [2d], 717; *Hefel vs. Whitely Land Co.*, 54 F., 179; *U. S. vs. Sixty-Five Terra Cotta Vases*, 18 F., 508; *the Chase*, 14 F., 854; *Johnson vs. Byrd*, 13 F. Cas. No. 7376; *Milne vs. Huber*, 17 F. Cas. No. 9617; *Ogden vs. Witherspoon*, 18 F. Cas. No. 10461; *Schenck vs. Peay*, 21 F. Cas. No. 12451; *Union Iron Co. vs. Pierce*, 24 F. Cas. No. 14367; *U. S. vs. Barr*, 24 F. Cas. No. 14527; *U. S. vs. Irwin*, 26 F. Cas. No. 15445; *U. S. vs. One Case of Hair Pencils*, 27 F. Cas. No. 15924; *West vs. Pine*, 29 F. Cas. No. 17423; *Wood vs. Jackson Iron Mfg. Co.*, 39 F. Cas. No. 17993; *Lewis vs. U. S.*, 244 U. S., 134) as thus provided in section 84 repealing all laws and orders and administrative regulations incompatible with the provisions of the Fisheries Act. From this it is inferred that the authority which the municipal councils then had to grant the exclusive privilege of fishery in their jurisdictional waters or zone has now been limited to the construction of fish corrals and to the operation of fishponds.

But the defendants argue that the Malampaya Sound is a fishpond within the meaning of section 67 and that, consequently, the municipal council of Taytay acted within its powers in granting the exclusive privilege to exploit the same. This contention again requires of us to determine the scope and meaning of the English word "fishpond" used in the law.

The word "fishpond" which is translated into "viviero de peces" in the Spanish text of the law, is composed of "fish" and "pond". Funk & Wagnall's Standard Dictionary, 20th Century edition, defines "fishpond" as a "pond containing fish". The same dictionary says that "pond" is "a body of still water, natural or artificial, smaller than a lake; sometimes, by extension, an enclosure for fish in a running stream." Webster's New International Dictionary, states that "pond" is "a body of water naturally or artificially confined, and usually smaller than a lake; in England, usually, except locally, a body of water artificially confined." Bouvier's Law Dictionary defines "pond" as a "body of stagnant water; a pool." "A lake is an inland body of water of considerable size, occupying a natural basin or depression in the earth's surface below the ordinary drainage level of the region, fed by either surface water or surface streams or by subterranean streams or springs, and having little or no current or motion of the waters in any particular direction. A pond has the same characteristics, except that it is of relatively small size and may be either natural or artificial. The controlling distinction between a river or stream and a pond or lake, independent of size, is that in a stream the water has a natural motion or a current, while in a pond or lake the water is, in its natural state, substantially at rest." (67 C. J., sec. 274, p. 849; *Carr vs. Moore*, 93 N. W., 52; *Western etc. Inv. Co. vs. Farmers' etc. Nat. Bank*, 57 P., 912; *Concord Mfg. Co. vs. Robertson*, 25 A., 718, 719; 66 N. H., 1; 18 L. K. A., 679; *Hardin vs. Jordan*, 140 U. S., 371; 35 Law. ed., 428; *Morgan County School Trustees vs. Schroll*, 12 N. E., 243; *Jones vs. Lee*, 43 N. W., 855; *Gouverneur vs. National Ice Co.*, 31 N.E., 865; *Froemke vs. Parker*, 171 N. W. 284.) in the Philippines where fishponds are found, these are invariably Domes of water enclosed by dikes of earth or other material constructed for the care and conservation of fish, for purposes of profit; in this respect fishponds and its waters are artificial, not natural, as they, are constructed through human effort and labor.

The fisheries Act does not define a fishpond, and according to its provisions it seems to refer both to what is natural and to what is artificial; but on the strength of the definitions and authorities aforecited, we are convinced, and so hold, that it was not the Legislature's intention to include within the meaning of fishpond the Malampaya Sound or other similar bodies of water of the Philippine Archipelago. We do not believe that the Legislature, in enacting the Fisheries Act, has intended to close from navigation and maritime traffic important bays of the

country, like the Malampaya Sound, which, as stated, by its area and importance, is a port accessible to the largest ocean vessels. Should we hold that the Malampaya Sound is a fishpond, the result would be that the exclusive license issued to the defendant Santos is legal and valid, and the latter, with very little effort, can close the same by ingenious ways and thereby exclude therefrom all ships desiring to navigate or anchor in its waters.

Another reason which has been advanced in favor of the validity of the ordinance is that, in the explanatory note accompanying the bill which is now Act No. 4003, it was stated that one of the purposes of the bill was to create new taxes for the Insular Government, without impairing the income of the municipalities; and it is contended that to rule that section 67 of said law repealed section 2321 of the Administrative Code, with respect to the granting of the exclusive privilege of fishery, would be tantamount to the impairment of the income of the municipalities.

We do not find any persuasive force in the argument. In the first place, the explanatory note of the proponents of the bill cannot be considered as a source of interpretation in ascertaining the intention of the Legislature, because it is not the report of the Committee of the Fishing Industry to which the bill was referred, which is presented to the legislative houses recommending the approval of the measure. "The intention of the legislature to which effect must be given is that expressed in the statute, and the courts will not inquire into the motives which influenced the legislature, or individual members, in voting for its passage; nor indeed as to the intention of the draftsman, or of the legislature, so far as it has not been expressed in the statute. So, in ascertaining the meaning of a statute, the court will not be governed or influenced by the views or opinions of any or all of the members of the legislature or its legislative committees, or of any other person." (59 C. J., sec. 604, p. 1017; U. S. vs. Chicago, etc. R. Co., 157 F., 616; Ex parte Goodrich, 117 P., 451; People vs. Chicago Rys. Co., 110 N. E., 402; Eddy vs. Morgan, 75 N. E., 174; Belleville, etc., R. Co. vs. Gregory, 15 Ill., 20; Bettenbrock vs. Miller, 112 N. E., 771; Tennant vs. Kuhlemeier, 120 N. W., 689; People vs. Marxhausen, 171 N. W., 567; Pollard vs. Gregg, 90 A., 176; 77 N. H., 190; Goins vs. Board of Trustees, 56 S. E., 629; In re Miles' Est., 272 Pa., 329; Tanevast vs. Kaminski, 143 S. E., 796; Litchfield vs. City of Bridgeport, 103 Conn., 565; Manning vs. Atlantic & Y. Ry. Co., 125 S. E., 555.) In the second place, in the explanatory note there is nothing indicating clearly that the intention of the proponents of the measure was to keep alive the provisions of section 2321 referring to the granting of the exclusive privileges of fishery by the municipalities, but on the contrary, it appears that the primordial purpose of the bill was to amend and compile all the existing legal provisions regarding fishery, a matter which includes the granting of the exclusive privileges of fishery in municipal waters; in the third place, the legislative intention to repeal all the existing laws incompatible with any of the provisions of the Fisheries Act is clearly set out in this law in its section 84; and, lastly, there is nothing in the law from which it may reasonably be inferred that it was its intention to consider as fishponds large and important bays and ports, like the Malampaya Sound.

In view of the foregoing considerations, we hold that the municipal council of Taytay was without authority to approve ordinance No. 1, series of 1933, that the latter is also illegal and void because incompatible with the Fisheries Act, and that the exclusive privilege granted to Roman Santos is likewise illegal and without effect. These conclusions favorably resolve the first two assignments of error of the plaintiffs.

- In their third assignment of error, the plaintiffs contend that the court erred in ordering them, jointly and severally, to pay the defendant Roman Santos the sum of twenty thousand (P20,000) pesos, by way of indemnity for damages. Having reached the conclusion that the exclusive privilege of fishery granted to said defendant is illegal and void, because it is ultra vires, the necessary consequence is that the plaintiffs cannot be legally answerable for any damage or injury because the latter is based upon a supposed right arising from a privilege which, like the ordinance authorizing it, has been held void and without effect. We, therefore, conclude that the third assignment of error is likewise well-founded and should be sustained.

- The plaintiffs assign as fourth and last error the denial of their motion for a new trial. They admit, however, that

they inserted it pro forma and as a corollary of the preceding ones. We do not see the necessity of considering it after what we have said, especially in view of the tact that the plaintiffs have not adduced any reason in its support.

In view of all the foregoing reasons, the appealed decision is reversed, and ordinance No. 1, series of 1933, of the municipality of Taytay, Province of Palawan, and the exclusive privilege of fishery in the Malampaya Sound granted by said municipality to the defendant Roman Santos, are declared illegal and void, and the plaintiffs absolved from the counterclaim and cross-complaint of the aforesaid defendant, the writ of preliminary injunction issued is made permanent, and the bond of twenty thousand (P20,000) pesos posted by the plaintiffs is cancelled, with the costs of this instance to the defendants-appellees. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, and Concepcion, JJ., concur.

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