

MIGUEL SAMSON, PLAINTIFF AND APPELLEE, VS. PAULINO DIONISIO AND HONORATA FABIAN, DEFENDANTS AND APPELLANTS.*G.R. No. 4543. October 29, 1908*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4543/>**TORRES, J.:**

Miguel Samson, the owner and possessor, for more than twenty years, of a fish pond in Panasahan, a barrio of Bambang, the location and area of which pond are described in his written complaint, states that the spouses Paulino Dionisio and Honorata Fabian, less than a year ago, constructed a dam in substitution of a former one, thereby closing the southern end of the Magos Creek which empties into the Bocaue River. In consequence, during the rainy season, the water rose for lack of an outlet, and the neighboring lands, including the plaintiff's fish pond, became flooded, and fish to the number of about two thousand, valued at P100, escaped; that the new dike prevents the emptying of the estero and effects considerable damage during the rainy season by raising the level of the water, for which reason the value of his fish pond is reduced, its banks and supports weakened, and it is impossible to keep it in good order. He further alleges that the said creek is a tributary of the Bocaue River and is of public domain and for the common use of all the owners of the neighboring estates, among which latter is the plaintiff's fish pond; therefore, he asked that judgment be entered in his favor, that the defendants be ordered to reopen at their expense and for, public use the mouth of the Magos Creek emptying into the Bocaue River, to pay P100 as indemnity for damages, and costs.

The defendants denied all the facts set out in the complaint, inasmuch as they had not closed any branch of a river that was of public domain, but had closed a small creek owned by them and located within land they had acquired by purchase; that the closing of the said creek caused no injury to the other estates in the locality, it not being true that the neighbors were in the habit of traveling in banquillas over the creek; that said creek had never been in public use; and that the fish pond of the plaintiff was not injured by the dam constructed upon their own land. As a special defense, it was alleged that, to the south of the fish pond described in the first paragraph of the complaint, there exists no branch of the river that might be utilized for the neighboring fields and fish ponds; that all the owners of land in the locality have access to the Bocaue River; and that the workmen and laborers of the rice fields pass over the said river and avail themselves of its waters without the necessity of using the creek; they therefore asked that the complaint be dismissed with costs.

By a subsequent writing, they prayed to be allowed to amend their answer, alleging that they denied the existence of the Magos Creek and that they had closed the mouth of the branch of the Bocaue River; that the defendants, in constructing mud banks for the purpose of retaining the waters within their own lands, did not go beyond the boundary of their property in the sitio of Magos; that in the said sitio no branch of the river exists, nor running water of any importance known by the name of the Magos Creek or lake; therefore, they asked the dismissal of the complaint with the costs against the plaintiff.

Evidence was adduced by the plaintiff and his exhibits were made of record; the court below entered judgment on the 28th of June, 1906, and ordered that the plaintiff recover from the defendants an indemnity of 150, and costs;

that the defendants, within sixty days of the receipt of a certified copy of the decision, remove or cause to be removed the entire dam erected near the mouth of said creek at the Bocaue River, prohibiting them forever from constructing any dam or barrier between the said creek and the river, which should impede the free and natural course of the waters and the passage of fish and bancas; and that, in case the defendants failed to comply with the order of removal or any injunction contained therein, the plaintiff should immediately communicate such failure to the court below in order that it might proceed in accordance with law and justice. The defendants excepted to this decision and moved for a new trial, submitting an affidavit subscribed by Paulino Dionisio, regarding an accident that happened to him on the day of the trial, but the judge below, in view of the proceedings, at the prayer of the plaintiff, and for the reasons stated in his order, overruled the said motion with the costs against the defendant.

As will be seen, the matter at issue is the question of the ownership of a creek or pond which receives its waters from the Bocaue River. According to the defendants, the said creek is situated within their own land, for which reason they believed they were entitled to construct dams at the entrance of the creek; but the plaintiff states that it is public property, and in common use by the residents of that locality.

Article 339 of the Civil Code provides that:

"Property of public ownership is:

"1. That destined to the public use, such as roads, canals, rivers, torrents, ports, and bridges constructed by the State, and banks, shores, roadsteads, and that of a similar character."

Article 344 of said code also prescribes that:

"Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service supported by the said towns or provinces."

Article 407 of said code provides:

"The following are of public ownership:

"1. Rivers and their natural beds.

* * * * *

"4. Lakes and ponds formed by nature on public lands and their beds."

The provisions of the above articles are substantially in conformity with the Law of Waters of the 3d of August, 1800, the only one extended to these Islands, which was published in the Gaceta de Manila of the 24th of September, 1871. It should be noted that, in classifying such properties, the code only mentions some of them by way of examples, as for instance, paragraph 1 of article 339 says "and that of a similar character."

It is proven by the record, and furthermore admitted by the defendants, that twice in succession, at an interval of a few months, they closed the southern end of the creek called Magos where it communicates with the Bocaue River, and removed or destroyed the dam or mud bank which at one time was further up the creek toward the east side of its mouth, substituting another dike of the same material further out toward the river and in a line with its eastern bank; the fish pond of the defendants has been widened in the direction of the river, as may be seen from the plans, Nos. 1 and 2, attached to the record.

This is not a question of the violation of the right of easement over the Magos Creek, nor does it appear that any question in such sense has been raised in this litigation, notwithstanding the fact that in the brief of the appellants

an attempt is made to turn the matter into an action upon an easement of waters.

The claim formulated in the complaint is restricted to the usurpation by a private individual of a creek or branch of a river of public ownership and utilized in common by the residents of the barrio of Bambang and the town of Bocaue, and to the loss and damage caused to the plaintiff on account of the dike or dam erected by the defendants, obstructing the flow of water between the Bocaue River and the said creek.

In the present cause it has not been proved that the Magos Creek formed a part of the land and fish pond of the defendants, and in spite of their denial that the said creek was located at the side of their land and fish pond, the evidence furnished by the plaintiff clearly contradicts them and shows the contrary, in an unquestionable manner, that is, that the Magos Creek existed in said locality and that it was utilized by the public in general; that it was a passage for the public traveling in small craft to and from the lands alongside the river; that fish passed in and out by it; and that through the said creek the waters coming from the adjoining estates during the rainy season flowed into the river until it was closed by the appellants.

Hence, upon the theory already proven, that the creek in question was of public ownership, and not the property of the defendants, it is clear that the latter had no right whatever to construct the said dams, closing its entrance into and communication with the Bocaue River; and, inasmuch as they did it without any authority and to the loss and prejudice of the plaintiff, they are under obligation to indemnify the latter for the reasons alleged by him in his complaint, in accordance with the provisions of article 1902 of the Civil Code.

In view of the foregoing, and for the reasons stated In the judgment appealed from, it is our opinion that the said judgment should be and is hereby affirmed, with the costs against the appellants; provided, however, that the indemnity to be paid to the plaintiff shall be but P100, as demanded by him in his complaint. So ordered.

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

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