

**RUFINA SALAO AND LUCIO LUCAS, PLAINTIFFS AND APPELLANTS,
VS. TEOFILO C. SANTOS, MUNICIPAL PRESIDENT OF MALABON,
RIZAL, AND ELIGIO GOZON, INTERVENOR, DEFENDANTS AND
APPELLEES.**

G.R. No. 45519. April 26, 1939

Ponente: MORAN, J.

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MORAN, J.:

The present action was instituted by plaintiffs Rufina Salao and Lucio Lucas, now appellants, to restrain the defendant. Teofilo C. Santos, as municipal president of labon, Rizal, from enforcing compliance with his letter of October 22, 1935, wherein said plaintiffs were directed to observe the requirements of ordinance No. 23, series of 1929, of said municipality, on the matter of the operation of their smoked fish factory (umbuyan). The ordinance reads in part as follows:

"Artículo 1.º Se prohíbe terminantemente la fabricacion de toda materia, objeto de industria que requiere el uso de combustible en edificious que no sean de materiales fuertes con techo de hierro galvanizado o de teja.

"Art. 2." Todos los propietarios administradores, industriales o encargados de todo edificio, camarin o local destinado para la fabricacion de cualquier articulo de materia prima que requiere el uso de combustibles para su transformacion en materias alimenticias o de otra industria, proveeran el edificio, camarin o local destinado al efecto de una chimenea o tubo de escape que sera de metal o de hierro galvanizado o de carbon y tendra una altura adecuada, de modo que el humo, carbon o chispas que despiden no perjudique a los edificios contiguos, ni constituyen el mayor peligro de conflagracion.

"Art. 3.º Para los efectos de esta ordenanza, toda fabricacion de ladrillos, alfareria o cal, trituracion, molienda o quema de piedras, huesos o conchas, la fabricacion de fosforos y otros negocios de caracter antihigienicos, nocivo, ofensivo o peligroso, guardaran una distancia de 40 metros de las casas o edincios contiguos; y la fabricacion de materias alimenticias asi como tambien la quema de los desperdicios de tabacos, guardaran una distancia de 20 metros de las casas o edificios a su alrededor. * * *"

The evidence discloses that for many years prior to the enactment of this ordinance, plaintiffs had already established a smoked fish factory in the barrio of Baritan, Malabon, Rizal, and had continually operated the same since then." On October 30, 1933, Lucio Lucas, one of the plaintiffs herein, was criminally prosecuted in the justice of the peace court of Malabon for non-compliance with the requirements of the ordinance aforementioned, but was acquitted of the charge. Thereafter, the intervenor herein, Eligio Gozon, whose house is situated near the smoked fish factory of the appellants, denounced said factory as a nuisance, by lodging a complaint in the central office of the Bureau of Health seeking relief against its continuance. An investigation was then conducted by the health authorities, and as a result thereof it was found that appellants' smoked fish factory was being operated not in accordance with the requirements of said ordinance. Whereupon, the Bureau of Health and the district health office took steps to enforce the ordinance and to that effect the president of the sanitary division of the municipality addressed a letter to one of the plaintiffs, requesting compliance therewith. Compliance was refused

on the ground that said plaintiff was not within the purview of the ordinance in accordance with the decision of the justice of the peace court above stated. The health authorities then addressed themselves to the municipal president who, for some reason or another, failed or omitted to act on the matter. Accordingly, the Department of the Interior, on the application of Eligio Gozon, intervened, and after several exchanges of correspondence with the provincial governor, the municipal president was required to enforce the order of the health authorities. Consequently, the municipal president addressed to one of the plaintiffs herein the letter of October 22, 1935, aforementioned, requiring the latter to comply with the ordinance of 1929 within 30 days on threat of having his license revoked. On October 10, 1935, however, the municipal council of Malabon had already enacted ordinance No. 10, series of 1935, amending ordinance No. 23 of 1929, the pertinent provisions of which follow:

"Article I. Ordinance No. 23, series of 1929, is hereby

amended by adding a new article thereto which reads as follows:

" 'Art. 3-(3). That this ordinance shall be effective only with regard to those that will be established after the approval hereof, and shall not be applicable to those already operating at the time of the approval of this ordinance.'

"Article II. The effectivity of this ordinance shall retroact to the date of the approval of ordinance No. 23, series of 1929."

Plaintiffs, in view of the president's order, instituted the present action for injunction to restrain him from enforcing his order. The trial court dismissed the action. Hence, this appeal.

It is not disputed that appellants' smoked fish factory was established long before the enactment of the ordinance in question. Municipal ordinances, like all statutes, are to be construed as having only prospective operation unless the intention to give them retrospective effect is expressly declared or is necessarily implied from the language used. There is nothing in the ordinance showing the intention to give it a retrospective effect. On the contrary, it expressly refers to "fabrica o negocio que se ha de levantar" and not to factories already established. That such was the intention of the ordinance of 1929 is confirmed by ordinance No. 10 of 1935, which expressly provides that the amended ordinance "shall not be applicable to those already operating at the time of the approval" of the same. This amendatory ordinance is valid, despite the alienation to the effect that the municipal president intended its enactment for the protection of appellants and to frustrate the order of the health authorities. Whatever might have been the personal motives of the municipal president, no improper motive can be attributed to the municipal council in its enactment, and, therefore, the same stands as the expression of the true intention of that body. Besides, this amendatory ordinance was duly approved by the provincial board in its resolution No. 1874.

Moreover, nuisances are of two kinds: nuisance per se and nuisance per accidens. The first is recognized as a nuisance under any and all circumstances, because it constitutes a direct menace to public health or safety, and, for that reason, may be abated summarily under the undefined law of necessity. The second is that which depends upon certain conditions and circumstances, and its existence being a question of fact, it cannot be abated without due hearing thereon in a tribunal authorized to decide whether such a thing does in law constitute a nuisance. (*Iloilo Ice and Cold Storage Co. vs. Municipal Council of Iloilo*, 24 Phil, 471; *Monteverde vs. Generoso*, 52 Phil., 123, 127.) Appellants' smoked fish factory is not a nuisance per se. It is a legitimate industry. If it be, in fact, a nuisance due to the manner of its operation, then it would be merely a nuisance per accidens. (*Iloilo Ice and Cold Storage Co. vs. Municipal Council of Iloilo*, supra; *Monteverde vs. Generoso*, supra.) Consequently, the order of the municipal president and those of the health authorities issued with a view to the summary abatement of what they have concluded, by their own findings, as a nuisance, are null and void there having been no hearing in court

to that effect.

Judgment is reversed, with costs against appellees.

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

Imperial, J., concurs in the result.

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