

EUSEBIO PELIÑO, PLAINTIFF AND APPELLEE, VS. JOSE ICHON, ET. AL., DEFENDANTS. JOSE ICHON, APPELLANT

G. R. No. 46455. October 31, 1939

Ponente: AVANCEÑA, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-46455/>

AVANCEÑA, C.J.:

The plaintiff is operating a cockpit in the municipality of Tanauan, under a license issued in accordance with municipal ordinance No. 20 of 1935 authorizing the establishment of a single cockpit in the municipality.

On March 15, 1938, the municipal council of Tanauan approved another ordinance No. 8 authorizing as many cockpits as are applied for. The Municipal President vetoed this ordinance. The municipal council, however, composed of six councilors, kept Ordinance No. 8 in being over the veto of the president by a two-thirds vote of its members.

The defendant, in turn, obtained a license, pursuant to this ordinance No. 8, to operate another cockpit in the same municipality.

On June 8, 1938, the plaintiff Eusebio Peliño brought this action against Jose Ichon and the municipal council of Tanauan, asking that municipal ordinance No. 8 be declared null and void and that the defendant Ichon be ordered to pay him, by way of damages, the amount of P2,000.

Upon petition of the plaintiff, the court, on April 9th of the same year, issued a writ of preliminary injunction against the defendants, which writ was lifted by the filing of a bond put up by the defendant Ichon.

The court declared ordinance No. 8 null and void, revived the writ of injunction issued against the defendants and ordered the defendant Ichon to pay the plaintiff the sum of P2,000 by way of damages. The defendants appealed from this decision.

The only ground of the appealed decision in annulling ordinance No. 8 is that the same is contrary to the spirit of section 2338 of the Revised Administrative Code and is beyond the powers granted to the municipal council by section 2243 of the same Code.

The portion of ordinance No. 8 which led the court to declare it null and void is that one authorizing as many cockpits in the municipality as there are applicants therefor. However, the municipal council acted within its powers in enacting this ordinance. It is granted discretion by law to regulate or prohibit cockpits (section 2243 of the Revised Administrative Code). While, according to this, the municipal council may absolutely prohibit cockpits, nevertheless, when it does not so prohibit, they are deemed to be authorized subject to its regulation. This power to regulate includes the power to fix its number, inasmuch as the law neither fixes it nor limits it to one.

The court sentenced the defendant to pay the plaintiff P2,000 by way of damages on the theory that the plaintiff suffered damages because of the establishment of defendant's cockpit. It is clearly seen from the facts set out that

no cause of action exists against the defendant. He operated his cockpit pursuant to a license issued under ordinance No. 8, in the enactment of which he had absolutely nothing to do.

The appealed judgment is reversed, ordinance No. 8 of the municipality of Tanauan, Leyte, is declared valid, and the defendant, is absolved from the sentence to pay damages without special pronouncement as to the costs. So ordered.

Villa-Real, Imperial, Diaz, Laurel, Conception, and Moran, JJ., concur.

Judgment reversed.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.