

**JEREMIAH J. HARTY, ROMAN CATHOLIC ARCHBISHOP OF MANILA,
PLAINTIFF AND APPELLEE, VS. THE MUNICIPALITY OF VICTORIA,
PROVINCE OF TARLAC, DEFENDANT AND APPELLANT.***G.R. No. 5013. March 11, 1909*

Ponente: TORRES, J.

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On January 17, 1908, the representative of Mgr. Jeremiah J. Harty, archbishop of the Roman Catholic Church, as the legal administrator of all the properties and rights of the Catholic Church within the archbishopric of Manila, filed a written complaint in the Court of First Instance of Tarlac against the municipality of Victoria, alleging that the parish of the said town had been and was then the owner of a parcel of land within the said municipality, known as the plaza of the church of Victoria; that it had acquired said parcel of land more than sixty years previously, and had continued to possess the same ever since up to 1901, in which year the defendant municipality unlawfully and forcibly seized the said property, claiming to be entitled thereto and retaining it to the present day. For the purposes of the complaint, a description of the metes and bounds of the land in question was set forth in the writing, and plaintiff prayed that, in view of what was therein set forth, judgment be entered holding that the said land was the property of the parish of Victoria, of the Roman Catholic Apostolic Church, and that the defendant be ordered to vacate the same and to pay the costs of the action.

The defendant municipality answered the complaint through its attorney and offered a general denial of all the facts stated therein, especially of those numbered 4, 5, 6, and 7; in special defense it alleged that the plaza described in No. 4 of the complaint was founded when the sitio denominated Canarum, a barrio of the town of Tarlac, was converted into a civil town in 1855; that the parish of Tarlac was established many years after the civil town, and that therefore, it neither had then, nor has now any title to the plaza claimed, and that the complaint injured the defendant, and for this reason it prayed that judgment be entered absolving the defendant of the complaint with costs and damages against the plaintiff.

Evidence was adduced by both parties, and the documents exhibited, to one of which the plaintiff objected, were made of record; the trial court rendered judgment on the 15th of June, 1908, holding that the parish of Victoria of the Roman Catholic Apostolic Church, had a better right to the possession of the land described in the complaint, and sentenced the defendant to vacate the same and to pay the costs. To said judgment the representative of the defendant excepted and moved for a new trial on the ground that it was contrary to the weight of the evidence, and he notified the court that, if his motion were overruled, he would appeal to the Supreme Court. The motion for a new trial was overruled; the defendant excepted, and presented the corresponding bill of exceptions which, after receipt of a copy had been acknowledged by the adverse party, was approved. On the 1st of September last, the appellant was ordered to furnish bond in the sum of P1,000 to insure the fulfillment of the judgment in the event that it should be totally or partially, affirmed. To said order the defendant excepted, but furnished the bond as directed by the court.

In view of the nature of the action brought by the plaintiff against the municipality of Victoria, Province of Tarlac, the question that has arisen between the contending parties consists only in determining who is the owner and proprietor of the parcel of land that surrounds the parish church of the said town, and which is called the public plaza of the same.

Article 339 of the Civil Code reads:

"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 reads;

"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."

From the evidence presented by both parties it appears that the town of Victoria, which was formerly only a barrio of the town of Tarlac and known as Canarum, was converted into a town in 1855, and named Victoria; to this end they must have laid out the streets and the plaza of the town, in the center of which were situated the church and parish house from the commencement, and at the expiration of about twelve years the parish of said town was constituted and the priest who was to perform the office of curate was appointed; that from the very beginning, the large tract of land that surrounds the church and the parish house was known as a public plaza, destined to the use of all the residents of the recently founded town; public performances and religious processions were held thereon without hindrance either on the part of the local authorities or of the curate of said town.

It must be assumed that the principal residents of the old barrio, being interested in the conversion of the barrio into a civil town, arranged in such a way that the barrio, as the center of the future town which was subsequently called Victoria, should have streets and a public plaza, with its church and parish house, and also a tribunal or building destined for the use of the municipality and the local official at that time called the *gobernadorcillo* and later" on *capitan municipal*, as has occurred in the foundation of all the towns in these Islands, under the old administrative laws.

It may be true that the father of the witness Casimiro Tañedo, who owned the space of land where the church and parish house were erected, had voluntarily donated it to the Catholic Church, the only one known at the time, but proper proof is lacking that the donation affirmed by the said Tañedo comprehended the whole of the large tract which at the present time constitutes the plaza of the town.

It was a custom observed by all the towns established administratively in these Islands under the old Laws of the Indies, that on their creation, a certain amount of land was always reserved for plazas, commons, and special and communal property, and as it is unquestionable that the said large space of land was left vacant in the center of the town of Victoria when it was constituted as a civil town, more than twelve years prior to the appointment of a permanent curate therein, there are good grounds to suppose that the late Vicente Tañedo donated the land now occupied by the church and parish house in said municipality for religious purposes, or to the church, but not to the parish curate, because at the time there was no curate at the new town of Victoria.

Even though all the remaining space of land which now forms the great plaza of the town of Victoria had been owned by the said Tañedo, it must be presumed that he waived his right thereto for the benefit of the townspeople, since from the creation or establishment of the town, down to the present day, all the residents, including the curate of said town, have enjoyed the free use of said plaza; it has not been satisfactorily shown that the

municipality or the principales of the town of Victoria had donated the whole of said land to the curate of Victoria or to the Catholic Church, as alleged, nor could it have been so donated, it being a public plaza destined to public use and was not of private ownership, or patrimony of the town of Victoria, or of the Province of Tarlac.

It should be noted that, among other things, plazas destined to the public use are not subject to prescription. (Art. 1936, Civil Code.)

That both the curates and the gobernadorcillos of the said town procured fruit trees and plants to be set out in the plaza, does not constitute an act of private ownership, but evidences the public use thereof, or perhaps the intention to improve and embellish the said plaza for the benefit of the townspeople.

Certain it is that the plaintiff has not proven that the Catholic Church or the parish of Victoria was the owner or proprietor of the said extensive piece of land which now forms the public plaza of said town, nor that it was in possession thereof under the form and conditions required by law, inasmuch as it has been fully proven that said plaza has been used without let or hindrance by the public and the residents of the town of Victoria ever since its creation. For the above reasons it is our opinion that the judgment appealed from should be reversed, and that it should be held, as we do hereby hold, that the whole of the land not occupied by the church of the town of Victoria and its parish house, is a public plaza of the said town, of public use, and that in consequence thereof, the defendant is absolved of the complaint without any special ruling as to the costs of both instances.

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

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