

PETRONILO DEL ROSARIO, PLAINTIFF AND APPELLEE, VS. VICENTE QUIOGUE, DEFENDANT AND APPELLANT.

G.R. No. 5461. February 28, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Petronilo del Rosario conducted an undertaker's establishment known as "La Funeraria Paz," on the Calzada de Bilibid, now Nos. 533 and 535 Calle Paz, in the district of Santa Cruz, for nine years previous to the entry or registration of said trade name in the registry on the 14th of January, 1909.

His branch establishments at No. 100 Calle Alix, in the district of Sampaloc, and Nos. 148 and 150 of Calle Ilaya, in the district of Tondo also bear the same name.

At the present time the main establishment on the Calzada de Bilibid is located upon other premises on the same street, now named Paz, and on the same sidewalk, about 50 meters beyond the old location at Nos. 513 and 515 on the same street.

The old premises, Nos. 533 and 535, together with No. 537, were occupied by Vicente Quiogue, operating a similar undertaker's establishment, under the name "La Nueva Funeraria Paz," with a sign bearing the said name placed in a most conspicuous spot, which name he also used in his advertisements in the local papers.

The name being almost the same, and the establishment being situated in the same place where "La Funeraria Paz" had been located and known for nine years, these facts have actually deceived those who, intending to send their orders to "La Funeraria Paz" of Petronilo del Rosario, inadvertently employed "La Nueva Funeraria Paz" of Vicente Quiogue, and the said establishment thus succeeded in obtaining benefits which should have gone to the real establishment whose services were sought.

In view of the foregoing, Petronilo del Rosario prayed the Court of First Instance of Manila to issue a preliminary injunction and another final one, prohibiting Vicente Quiogue from using the name "Funeraria Paz" in his above-mentioned establishment, and in addition asked that the latter be adjudged to pay P500 as losses and damages, and the costs.

The court below granted the two injunctions with the costs against the defendant, but dismissed the claim for an indemnity for losses and damages, for the reason that they were not proven; from the said judgment the defendant has appealed and submitted his bill of exceptions to this court.

Upon appeal it now appears that the following error has been assigned:

"The court below erred in maintaining that the plaintiff had acquired the exclusive right to the use of the word 'Paz' in his trade name as against any other person on the same street by reason of the long time he had used said word, and by virtue of the recording of the same in the registry of trade-marks and trade-names, it appearing that 'Paz' is the name of the street where the undertaker's establishment is located."

In support of the above assignment of error, section 2 of Act No. 666 of the Philippine Commission is especially relied upon, in connection with its proviso, which is of the following tenor:

"Provided, That a designation or part of a designation which relates only to the name, quality, or description of the merchandise or geographical place of its production or origin can not be the subject of a trade-mark."

In accordance with the above provision, the defendant can not be prevented from using the word "Funeraria," a generic name of the trade, and it was so admitted at the trial; but as to the name "Paz," it does not appear that it is a "geographical name of the place of production or origin of an article," as in the examples of names rejected in the decisions cited by the appellant, such as "Pennsylvania wheat," "Kentucky hemp," "Virginia tobacco," "Sea-island cotton," etc.

"Paz" is a name which has been used by the plaintiff to designate his establishment, not necessarily taken from the name of the street on which it is situated at the present time, since the name of "Paz" was in use when the establishment was located on the Calzada de Bilibid; and while located at the latter place he registered the name and the place became so known in his business papers (Exhibits B and C); the word "Paz" is also applied to his establishments situated on Calle Ilaya in Tondo, and on Calle Alix in Sampaloc, and is still so used.

The following findings of fact are contained in the judgment appealed from: (1) That the words "La Nueva" appear on the sign of the establishment of the defendant, with letters one span in width, and the words "Funeraria Paz" in letters of more than double the size, and identical with those on the sign of the plaintiff's establishment; (2) that the defendant opened his establishment in the place that was formerly occupied by the plaintiff; and (3) that the defendant, according to his own declaration, had fixed lower rates than those charged by the plaintiff for the services of his establishment.

From all of the foregoing conclusions, the trial court concluded that the use of the words "Funeraria Paz" answered no other purpose than that of making it easy to mistake the defendant's establishment for that of the plaintiff formerly located in the same place, or so that it might be considered as its successor; that the addition of "La Nueva" was nothing more than a trick employed by the defendant in order to covertly appropriate the trade name of the plaintiff; that the very fact of adding "La Nueva" to the prominent words "Funeraria Paz" on the sign shows how fully convinced he was that, without such an addition, he could not use the said sign which he now considers as a "generic name of the place of production or origin" referred to in said Act No. 666; that the lowering of rates, together with all the circumstances set forth, tended to establish a competition in bad faith; and that the results are as shown by the defendant in his claim for damages by reason of the preliminary injunction, which prevented him from obtaining such beneficial results.

In this instance the defendant insists that the plaintiff should be adjudged to pay him P2,000, by reason of the said preliminary injunction, without any express assignment of error against the judgment which naturally did not grant him an indemnity for the damages claimed by him.

His claim is stated as follows:

"It has been shown at the trial by the books of the defendant that, from the 8th to the 24th of January, a period of sixteen days, the collections amounted to P380 Philippine currency; and from January 24, to the day when he testified, February 1, the collections only amounted to F39. Said difference is due to the fact that the defendant had extensively advertised his business under the former name, and because of the injunction he was obliged to commence the business under another name, thus losing the benefit of his advertisements." (Brief, 10.)

"Hence, the word 'Tax' - as concluded in the judgment appealed from - added to the word 'Funeraria' on the sign of the defendant's establishment, although preceded by the words 'La Nueva,' is what attracted clients, to

the establishment, and not the lower rates charged for services." (B. of E., 14.)

In view of the fact that the only error assigned by the appellant has not been proven, the judgment appealed from is hereby affirmed with the costs of this instance against the appellant. So ordered.

Johnson, Carson, and Moreland, JJ., concur.

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