

EUFEMIO MUMAR, PLAINTIFF AND APPELLEE, VS. CANUTO DIEPARINE, DEFENDANT AND APPELLANT.

G.R. No. 5580. December 27, 1910

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action for damages for the wrongful destruction of a fish trap placed in the waters of the municipality of Talibon, Province of Bohol.

The plaintiff alleges that from the month of March, 1906, until February, 1907, and especially during the month last mentioned, the plaintiff had been soliciting and obtaining from the municipality of Talibon a license to place a fish trap in the locality known as Lobungan, municipality of Talibon, Province of Bohol; that in February, 1907, the plaintiff had located a fish trap in the waters above named, having a proper license for such privilege; that the defendant, knowing that fact, placed another fish trap in the same locality; that on the 14th of February, 1907, the defendant removed or caused to be removed from the place in which it then was the fish trap belonging to the plaintiff, and transferred or caused to be transferred the materials composing such fish trap to a building belonging to the municipality of Talibon; that, by reason of the defendant's wrongful act, the plaintiff had suffered damages in the sum of P1,500, the value of the materials removed, and for the loss of the profits which he would have made had he been permitted peacefully to operate his trap, in the sum of P3,000.

The defendant, answering the complaint, alleged that he had obtained a license to construct a fish trap in the locality heretofore described on the 11th day of December, 1906; that, after obtaining said license and before anyone else had placed a fish trap in the locality to which his license referred, he constructed and placed in said locality a fish trap in conformity with the terms of said license, and began to operate the same; that the fish trap being thus located and in operation, the plaintiff, illegally and without warrant of law, and in violation of the ordinances of the municipality, and for the purpose of injuring the defendant, on the 27th day of December, 1906, constructed his fish trap in the same locality, placing the same in relation to the location of the defendant's trap at a place prohibited by the ordinances of the municipality; that by reason of such violation of said ordinances, the defendant complained to the proper authorities, the plaintiff was arrested for said violation, was convicted and fined in accordance with the provisions of law.

It seems from the evidence introduced on the trial that the defendant, as he alleges, had, on the 11th day of December, obtained a license to place a fish trap in the locality already mentioned, and, in pursuance of said license, had constructed his fish trap to completion prior to the 24th day of December; that prior to the said 24th day of December the plaintiff in this case, without a license, had begun to construct a fish trap in the same locality, but within 150 feet of the fish trap of the defendant, and said fish trap was constructed or in process of construction on said 24th day of December; that on said date the plaintiff obtained his license to place the fish trap the construction of which he had begun some time before without a license.

It seems also from the proofs that there existed an ordinance in the municipality of Talibon which prohibited one

from building a fish trap without a license, and also from building a fish trap with a license within 150 feet of a fish trap already constructed or in process of construction.

It will be thus observed that, at the time the plaintiff began to construct his fish trap and up to the 24th day of December aforesaid, he was acting in violation of the ordinances of the municipality, in that he had not yet obtained a license to construct or to begin the construction of a fish trap. Moreover, even though he had had a license, he was still violating the ordinances of the village in that he was constructing his trap within 150 feet of the defendant's. It appears further that at the time the defendant had completed his fish trap, the plaintiff had received no license to construct one. Therefore, every act he performed in the construction of his trap was in violation of the law and he could, accordingly, acquire no rights against the municipality or against the defendant by such acts.

From the facts proved it appears that the defendant took no part directly or indirectly in the removing of plaintiff's fish trap. That was done by the municipal police under the directions of the municipality. The defendant was present at the time the removal was effected, but, so far as appears from the record, took no part therein and gave no directions in relation thereto.

The learned trial court upon the trial found in favor of the plaintiff, awarding him a judgment against the defendant for damages in the sum of P400, with interest thereon from the date of the presentation of the complaint. From the facts already presented, and the reasons above expressed, we are of the opinion that the judgment of the learned trial court must be reversed and the defendant absolved from liability in relation to the facts set out in plaintiff's complaint.

The judgment of the court below is accordingly reversed, without special finding as to costs. So ordered.

Arellano, C. J., Torres, Johnson, and Trent, JJ., concur.

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