

**MARCELO MANTILE ET AL., PLAINTIFFS AND APPELLEES, VS.
ALEJANDRO CAJUCOM ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 5734. August 17, 1911*

Ponente: TORRES, J.

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This is an appeal by the defendants from the judgment rendered in the matter of the principal issue, and in the incidental one of contempt of court.

THE INCIDENTAL ISSUE OF CONTEMPT.

On June 22, 1908, the attorneys for the plaintiffs Marcelo Mantile, Sebastian Bancod, Adriano Espafiol, Gregorio Corpus, Claudio Angeles, Doroteo Dacuno, Fernando Polintan, Maximino Fajardo, Catalino Rubio, Alejandro Caisip, Diego Santiago, Eugenio Ronquillo, Raymundo Santiago, Simon de la Cruz, Anacleto de los Reyes, Rafael Mendoza, Marcelino Fajardo, Tomas Marcelo, Inocencio Santiago, Eugenio Angeles, Segundo Ramos, and Geronimo Rojas, filed a written complaint against Alejandro Cajucum and Timoteo Cajucum wherein they prayed for the issuance of a writ of preliminary injunction to restrain the defendants from continuing to close the canal or estero called Paligui ng Buquid Puntang Piniping, in the barrio of Biga of the pueblo of Bongabon, and through which the water ran that irrigated the sementeras, or rice fields of which the plaintiffs were the owners, and from obstructing the course of such water, and furthermore that, after the hearing of the case, a writ of perpetual injunction be issued against the said defendants, and that the latter be sentenced to pay to each of the twenty-two plaintiffs the amount of the losses and damages caused him, and the costs.

The plaintiffs having furnished bond, the court, by order of July 26, 1908, directed that preliminary injunction issue against the said defendants, their agents and representatives, restraining them from performing any act whatever that might tend to close or obstruct the canal or estero called Paligui ng Buquid Puntang Piniping, in the barrio and pueblo before-mentioned, of the Province of Nueva Ecija, and to refrain from hindering the passage of the water that flowed through the said canal. The defendants were notified of this writ and it was served upon them on the 29th of the same month.

By a petition of July 6, 1908, counsel for the plaintiffs set forth under oath that, according to information he had received, the defendants were continuing to obstruct and hinder the passage of the water, in disobedience to the judicial order, and prayed that the said defendants be notified to appear and state their reasons, if any they had, why they should not be punished for contempt of court for disobedience to the writ of preliminary injunction issued. This petition was granted and the defendants having been notified, they alleged in writing, on the 14th of the same month, that they had been notified on the 3d of July of the said writ by the sheriff of Nueva Ecija and since then had complied with the Order of the court, but called attention to the fact that the stream had been closed by two tenants of the defendant, Alejandro Cajucum, on the 1st of the preceding month of July, since which date neither they, the defendants, nor any other person in their representation, had done anything whatever to the stream or ditch in question; wherefore they prayed that the two men who closed the said stream be examined, and

that, in view of such facts, the charge of contempt of court be dismissed, and the plaintiffs be sentenced to pay the costs, and the damages occasioned.

The court, after the witnesses summoned had been examined, decided, on August 20, 1908, that the defendants had committed contempt of court and imposed upon each of them a fine of P200, and imprisonment until they should duly comply with the writ of injunction, and sentenced each of them to pay one-half of the costs.

Defendants excepted to this judgment and, the required bill of exceptions having been submitted, the Supreme Court, in its decision of January 11, [31] 1910,[1] dismissed the appeal on the ground that the said bill of exceptions had been improperly admitted, inasmuch as the order issued in connection with the incidental question of contempt of court, could be reviewed only after the rendition of judgment on the main issue, and not until then could the said incident of contempt be, by means of a bill of exceptions, submitted to this court; therefore the records in the case were remanded to the court below, later to be transmitted to the clerk of this court upon the filing of the main record with the bill of exceptions.

By the writ of preliminary injunction issued on June 26, 1908, the original of which is on file, page 7 of the main record, the defendants Alejandro and Timoteo Cajucom, their attorneys, representatives and agents, were enjoined from performing any act whatever that might tend to close and obstruct the canal, a branch, called Paligui ng Buquid Puntang Piniping, of an estero situated in the barrio of Biga of the pueblo of Bongabon, Nueva Ecija, and to cease to obstruct or hinder the course of the water that should flow through the said branch.

In the written complaint presented on June 22, 1908, it is averred that the said canal or estero was closed by the representatives of the defendants, on the 1st of June of the year therein stated, and that since then the water which it ordinarily carried had ceased to flow through it, the plaintiffs' lands thereby being deprived of irrigation. So that when the writ of injunction was issued on the 26th of the said month, it was taken for granted that the estero or canal in question was closed and that the water did not run through it, as occurred prior to the said 1st of June; and counsel for the plaintiffs, in charging, by a writing of July 6, 1908, that contempt of court was committed, stated that the defendants, according to the information he had, were still obstructing and hindering the passage of the water, in disobedience of the writ of injunction.

The defendants having been notified to show cause why they should not be punished for contempt of court and disobedience of the preliminary injunction issued by the court, answered that since the 3d of July, the date when they were notified by the deputy sheriff, they had complied with the prohibitory order and had not done anything whatever, by themselves or through others in their representation^ to the stream or ditch in question, which was closed by two tenants of one of the defendants, Alejandro Cajucom, on June 1, 1908, as acknowledged by said tenants.

The writ issued by the court contained no order instructing the defendants to raise or remove the obstructions that prevented the water from flowing through the said canal or ditch.

The canal was obstructed and closed on June 1st, and when the persons who closed it were notified on July 3 that they should abstain from performing any act whatever tending to obstruct and prevent the flow of water, the canal or ditch still remained closed, and the record shows no proof that it was afterwards opened to the passage of water, nor that, after the defendants had been notified of the injunction, they again closed it. The fact that the latter failed to remove the obstruction they had placed in the said canal or estero for the purpose of preventing the passage of the water, since they were not ordered so to do by the judicial writ, is not sufficient to make them liable for contempt of court.

The act of the closing of the canal occurred prior to the issuance of the writ, and, since a thing that has already

been done can not be prohibited, by the mere fact of there not having been done what was not ordered in the writ it can not be held that a judicial order was disobeyed and willfully disregarded.

Section 162 of the Code of Civil Procedure prescribes:

"An injunction is a writ or order requiring a person to refrain from a particular act."

The said writ prohibited the performance of any act that would obstruct, close, or hinder the course of the water through the Piniping canal or creek, when it was already obstructed and closed; and as the removal of the impediment or obstruction was not ordered, the defendants were not obliged to perform any particular act, and their inaction in leaving the canal closed does not constitute contempt of court, as they did not violate any judicial prohibition.

The record shows that the prohibition was issued after the closing of the canal; hence, if the defendants did not remove the obstruction, there disobeyed no order. In the syllabus of decision No. 1697, Municipal council of Santa Rosa vs. Provincial Board of La Laguna (3 Phil. Rep., 206), the rule was laid down that the commission of an act already done can not be enjoined. To say that it could, would be nonsense.

THE MAIN ISSUE.

On January 28, 1909, the plaintiffs filed an amended complaint, with the permission of the court, wherein they alleged that certain of them named Maria Marcelo, Crisanto Rubio, Alipio Espanol or Estanol, Marcelo Mantile, Adriano Espanol or Estañol, Sebastian Bancod, Claudio Angeles, Diego Santiago, Raymun do Santiago, Anacleto de los Reyes, Rafael Mendoza; Clemente Alivia, Marcelino Fajardo, and Segundo Ramos had been, on or about June 1, 1908, and were at the time, the proprietors and owners of rice lands situated in the barrio of Biga of the pueblo of Bongabon, and that the other plaintiffs were planters and cultivators of some portions of the said lands; that (following the statement in the complaint as to the boundaries or adjacent lands of each of their respective properties) the said Paligui ng Buquid Puntang Piniping estero or creek existed and had always existed in the aforementioned barrio; that water flowed through it on or about June 1, 1908, and the plaintiffs used that water in the cultivation of their above-mentioned lands; that, on or about the date aforesaid, the defendants, by themselves and through their agents and representatives, obstructed and closed the mouth of the estero in such manner that the lands described were deprived of the water that had flowed and should flow through the said estero; that, on or about the 4th of October of the same year before mentioned, the continual heavy rains and high floods carried away the obstruction in the said Paligui ng Buquid Puntang Piniping estero; that, in view of the statements made by the defendants, they believed that the latter would again close the estero in order to obstruct the passage of the water to their (the plaintiffs') properties; and that the plaintiffs, through the closing of the said estero or creek, suffered losses and damages in the following amounts: Maria Marcelo, P1,500; Crisanto Rubio, P250; Alipio Espanol, P75; Marcelo Mantile, P2,500; Adriano Espanol, P75; Sebastian Bancod, P400; Gregorio Corpus, P150; Claudio Angeles, P250; Doroteo Dacuno, P250; Fernando Polintan, P250; Maximino Fajardo, P200; Catalino Rubio, P300; Alejandro Caisip, P270; Diego Santiago, P800; Eugenio Ronquillo, P486; Raymundo Santiago, P550; Simeon [Simon] de la Cruz, P480; Anacleto de los Reyes, P180; Rafael Mendoza, P300; Marcelino Fajardo, P340; Tomas Marcelo, P270; Inocencio Santiago, P375; Eugenio Angeles, P375; Geronimo Rojas, P135; Segundo Ramos, P390, and Clemente Alivia, P219; and the complaint concluded by asking the court to render judgment against the defendants, and, at the termination of the trial, to issue a perpetual injunction enjoining them from closing the said estero or creek, or in any manner obstructing the course of the water therein, and furthermore, to sentence them to pay to the plaintiffs the losses and damages suffered by them, and the costs of the suit.

On February 11, 1909, the defendants' counsel, answering the amended complaint, made a general denial of each

and all the allegations of the said complaint arid alleged, as a special defense, that the irrigation canal in question belonged to the defendants; that the mouth of the said Paligui ng Buquid Puntang Piniping canal did not previously exist and was opened only at the request of Marcelo Mantile; and that the plaintiffs' lands were provided with another irrigation ditch independent of the one herein concerned. Said counsel therefore prayed that his clients be absolved from the complaint, that the irrigation canal in question be declared to belong to the defendants, and that the plaintiffs be sentenced to pay the costs.

On April 26, 1909, the case came up for hearing, testimony was adduced by both parties and the court, after consideration of the evidence, rendered judgment on July 26, 1909, enjoining the defendant Alejandro Cajucom from closing the Paligui ng Buquid Puntang Piniping estero or creek, or in any manner obstructing the course of the water running therein. The preliminary injunction issued against the defendant, his agents and representatives, by the Hon. Judge Estanislao Yusay, was thus rendered perpetual, and the said defendant was sentenced to pay the following sums, for losses and damages: To Maria Marcelo, P196.50; Crisanto Rubio, P139.50; Alipio Español, P75; Marcelo Mantile, P800.25; Adriano Español, P75; Sebastian Bancod, P142.50; Gregorio Corpus, P90.12; Claudio Angeles, P97.87; Doroteo Dacuno, P90.37; Fernando Polintan, P80.87; Maximino Fajardo, P75.37; Alejandro Caisip, P75; Catalino Rubio, P84; Diego Santiago, P131.25; Eugenio Ronquillo, P181.25; Raymundo Santiago, P540; Simon de la Cruz, P135; Anacleto de los Reyes, P90; Rafael Mendoza, P195; Marcelino Fajardo, P180; Geronimo Rojas, P90; Segundo Ramos, P210; Clemente Alivia, P109.50, and to Tomas Marcelo, Inocencio Santiago, and Eugenio Angeles, tenants-on-shares of Maria Marcelo, the sum of P196.50. Counsel for the defendant, Alejandro Cajucom, excepted to this judgment and prayed for a new trial on the grounds that the said judgment was not sufficiently supported by the weight of the evidence and was contrary to law. This motion was overruled by an order of September 2 and exception thereto was taken by the appellant who duly filed the proper bill of exceptions, which was certified to and forwarded to the clerk of this court.

Counsel for the appellants having been authorized, by an order of February 12, 1910, to present the facts relative to the charge of contempt of court, as an incident of the main issue, and upon his petition, the Supreme Court ruled that the bill of exceptions relative to the matter of the contempt of court, together with the evidence therewith submitted, should be held to be an integral part of the said main issue with the bill of exceptions thereto pertaining.

With regard to the main issue of this suit, the object of the plaintiffs is to obtain from the court an order decreeing the former preliminary injunction to be perpetual. This claim, which is opposed by the defendants, presupposes a right on the part of the plaintiffs to use and profit by the water that runs through the Piniping estero or creek, to the benefit of their respective agricultural lands.

The law applicable to the present contention is found in articles 407 to 425 of the Civil Code, in the last of which it is provided:

"In all that is not expressly determined by the provisions of this chapter, the special law of waters shall be observed."

This law is that of August 3, 1866, which was extended to the Philippine Islands by the royal decree of the 8th of the same month and year and published with the *Deereto de cumplase* of the Gobierno General of September 21, 1871, in the Official Gazette of the 24th of the same month and year, on account of the subsequent law of June 13, 1879, in force in Spain, not having been promulgated in these Islands. It contains, among others, the provisions found in articles 30 to 65 applicable to the case at bar.

The scant data and the insufficiency of the evidence offered by the record, preclude this court's deciding, in accordance with the law, upon the pleadings and the proofs submitted by the parties, the several issues raised in

the course of this litigation, and for this reason we esteem it proper that the case be reopened for the conduct of the following proceedings:

- An ocular inspection shall be made by the justice or auxiliary justice of the peace, attended by expert surveyors - one of which latter to be appointed by each of the parties to the suit for the purpose of determining whether the water from the estero named Sapang Cabasan issues from a spring called Sibul; whether this spring and the said estero are upon the land owned by the defendants, and, if not, who is the owner of the land on which they are located, and whether he is a third person who is not a party to this suit.
- Whether the creek, estero, or ditch, named Paligui Puntang Piniping, is connected or united with the Sapang Cabasan estero, and whether the said Puntang Piniping creek or canal crosses the lands of defendants or those of the plaintiffs.
- To ascertain at what point or place either of the said Cabasan or Piniping canals was closed; whether the closure was made on the land of defendants or on that of the plaintiffs, and whether, on account of such closure, the course of the water was completely obstructed and prevented from entering the lands of the plaintiffs.
- 4. Whether the Paligui Puntang Piniping creek, canal, or estero passes through the sitio called Pinagtubuhan, or receives water from some other spring, creek, or canal, stating the name of the same and whether it is distinct and separate from the Sapang Cabasan estero,

A rough sketch must be drawn that shall show the location of the lands of the defendants and those of the plaintiffs; the points where the said two esteros and the Sibul Spring are situated; the exact point where the closure of the canal was effected; which of the lands are situated in high places and which in low places; and in what direction the water flows after rising from the Sibul Spring and entering into the Sapang Cabasan estero.

- An investigation and report shall be made as to whether the Puntang Piniping canal or estero is of recent formation and was excavated but a short time ago, or whether, by the signs observed on its banks, it appears that it was opened many years ago, stating since when it has been opened.
- Investigation and report shall be made as to whether the plaintiffs' lands receive irrigation water from any spring, estero, or creek, other than those before mentioned, and, if so, their names and the distances between them, and the latter shall be noted on the rough sketch drawn by the surveyors.

From the result obtained from these proceedings, and the rough sketch drawn by the experts, we shall easily be able to arrive at a conclusion as to whether the defendants had or had not a right to close the Cabasan or Puntang Piniping creek, thus depriving the plaintiffs' sementeras of the water flowing through it, or whether, on the other hand, the plaintiffs had a right to the enjoyment and use of such water for the irrigation of their lands, and whether, through the want of the same, they suffered losses and damages by fault of the said defendants. For the foregoing reasons, justice demands, in our opinion, that we find that the defendants Alejandro and Timoteo Cajucom did not commit any act whatever constituting contempt of a judicial order. The order of August 20, 1908 is reversed. No special finding is made as to the costs of the incidental proceedings.

The judgment appealed from, of July 26, 1909, is set aside, and the record of the case shall be remanded, with a certified copy of this decision, to the court below in order that the judge may proceed with a rehearing and conduct the proceedings herein before specified, and in due season render judgment wherein he shall take into account the evidence already contained in the record, together with such new evidence as may be admitted, in accordance with this decision and in harmony with the law. So ordered.

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

[1] Mantile vs. Cajucom, 15 Phil. Rep, 118.

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