

**PASTOR RAFAEL, PLAINTIFF AND APPELLANT, VS. W.O. KAMINER,
AS PROVINCIAL TREASURER OF THE PROVINCE OF RIZAL,
DEFENDANT AND APPELLANT.**

G.R. No. 7586. September 20, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

The plaintiff, for some time prior to the 31st of December, 1909, had been, the licensee of a certain cockpit, in the municipality of San Juan del Monte. The defendant, at the time of the commencement of the present action, was the treasurer of the Province of Rizal. Under the municipal ordinance of said municipality, the annual license fee for maintaining and running a cockpit for the year ending December 31, 1909, was, including the internal revenue license, the sum of P1,500. The licensee was permitted, under the old ordinance, to pay said license fee for a period of three months at a time in advance.

After the year beginning with January 1, 1910, the ordinance of said municipality was amended, so that the licensee, for permission to run or maintain said cockpit, was required to pay the annual fee, including the internal revenue license, of P4,200. Said amended ordinance was approved by the provincial board of the Province of Rizal some time in the month of January, 1910. The plaintiff was granted a license to maintain a cockpit under said new ordinance and paid to the provincial treasurer the sum of P375, the amount due for each three months, under the old ordinance, "without prejudice to his compliance with the provisions of the new ordinance." Said sum was paid before the new ordinance had been approved by the provincial board. Under the amended or new ordinance the amount due from the plaintiff for each three months in advance was the sum, including the internal revenue tax, of P1,050; so that it will be seen that the plaintiff was still owing to the municipality the sum of P675. This sum he failed to pay' upon demand, and the defendant, for such default, was threatening to sell the cockpit of the plaintiff, for the purpose of recovering the amount still due under the license which had been granted to him. At this juncture, the plaintiff commenced an action in the Court of First Instance to secure an injunction against the defendant from proceeding in the manner indicated, for the collection of said sum of P675. A preliminary injunction was granted upon the presentation of the complaint, by the Court of First Instance. A complaint and answer were filed by the respective parties. At the time of the trial the case was submitted upon the following agreement of facts:

"1. That the ordinance in force last year, relating to cockpit license fees in the municipality of San Juan del Monte, was modified by another ordinance passed by the same municipal council.

"2. That, while the new ordinance was pending approval by the provincial board, the plaintiff was allowed to pay the license fee prescribed by the old ordinance, P375, without prejudice to his compliance with the provisions of the new ordinance.

"3. That the plaintiff paid the said fee to the municipal treasurer of San Juan del Monte, whom the provincial treasurer instructed to receive the amount thereof, until the claim made by the licensee of the cockpit against the municipal council should be finally settled by the provincial board.

"4. That the fee fixed by the municipal ordinance of San Juan del Monte is P4,000 per annum only, and that the P200 is the amount of the license fee required by the Internal Revenue Law to be paid by the cockpit licensee.

"5. That the ordinance passed by the municipal council of San Juan del Monte, fixing" the fee at P4,000, and against which the plaintiff filed a claim, has been finally approved by the provincial board."

Upon said facts a very interesting opinion by the Honorable Simplicio del Rosario, judge, was filed, dissolving the temporary injunction theretofore granted, and denying the prayer of the plaintiff, the dispositive part of said decision being as follows:

"Therefore, the injunction issued against the defendant is dissolved and he is authorized to sell at public auction the cockpit belonging to the plaintiff, should the latter not pay the sum of P675 he owes the defendant in his capacity of provincial treasurer of Rizal, as the difference between the fee of P1,050 which he is obligated to pay for the first quarter of the present year, and that of P375, which is all he has paid; with the costs against the plaintiff. Said sum of P675, as well as such further part of the fee as the plaintiff may in future owe, may be collected out of the bond given by the licensee's bondsmen, in the event of the latter's delinquency or of the insufficiency of the amount realized from the sale of the cockpit at public auction."

From that judgment the defendant appealed to this court.

The appellant here presents a very interesting discussion upon the question relating to the time when the ordinance in question took effect. It was adopted by the municipal council on the 31st day of December, 1909, for the year 1910. It was not approved by the provincial board until some time later. Did it take effect on the day of its enactment or on the day of its approval by the provincial board? We deem it unnecessary to discuss this question at this time, for the reason that the plaintiff petitioned for and was granted a license to maintain the cockpit for the year 1910, commencing with the 1st of January, and actually opened and maintained the same from that date. In order to be permitted to open his cockpit on the 1st of January, 1910, he paid the amount of the license fee for the first quarter which had been required under the ordinance of 1909, with the promise to pay the balance when the new ordinance should be approved. His payment was accepted by the municipal authorities and was made by him under the condition that the same should be "without prejudice to his compliance with the provisions of the new ordinance." Except for this promise to pay the balance due under the new ordinance when the same should be approved, on the part of the plaintiff, certainly he would not have been permitted to open his cockpit on January 1, 1910. Considering the express promise of the plaintiff to pay the full amount fixed by the ordinance for the license to open his cockpit for the year 1910, when the same should be approved, and considering the fact that he was actually permitted to open his cockpit on January 1, 1910, with that understanding, we find nothing in the record which justifies a reversal of the judgment of the lower court, and, without discussing the other questions presented by the appellant, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Carson, Moreland, and Trent, JJ., concur.

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