

EDWIN WILLIAM CASE ET AL., PLAINTIFFS AND APPELLEES, VS. LA JUNTA DE SANIDAD DE MANILA, AND ITS DIRECTOR, VICTOR G. HEISER, DEFENDANTS AND APPELLANTS.

G.R. No. 7595. February 04, 1913

Ponente: JOHNSON, J.

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JOHNSON, J.:

This is an appeal by the defendants from a judgment of the Court of First Instance of the city of Manila, in which said court enjoined them from proceeding in the performance of their alleged duties, as prescribed in Ordinance No. 125 of the city of Manila.

The lower court held that said ordinance (No. 125) was null and void and for that reason enjoined the defendants from enforcing the same.

It appears from the record that the plaintiff, Edwin William Case, is the owner of a certain house and lot, located at No. 202 Calle Solana, within the walled city of Manila; that said house is occupied, from time to time, by a large number of persons. It seems to be an apartment house, gymnasium, or dormitory.

On or about the 20th of November, 1909, the assistant sanitary engineer of the Bureau of Health, by order of the Director of Health, addressed a letter to the representatives of the plaintiffs, informing them that the sanitary condition of said premises (202 Calle Solana) was very bad, and directing them to make connections with the new sewer system. (See Exhibit A.)

The plaintiff not having complied with the order contained in said notice (November 20, 1909), on the 28th of December, 1909, the said assistant engineer of the Bureau of Health addressed another letter (Exhibit B) to the representatives of the plaintiff, calling attention to the fact that the instructions in the former order not having been carried out he would be given ten days in which to comply with the same.

The foregoing notices of the orders and directions of the Director of Health were given to the plaintiff in compliance with the provisions of Ordinance No. 125 of the city of Manila, entitled:

"An ordinance to regulate and enforce the use of sewers and drains in the city of Manila, Philippine Islands."

Thereafter, on the 12th of January, 1910, the plaintiff filed a petition in the Court of First Instance of the city of Manila, praying that the defendants be enjoined from carrying out the performance of said orders requiring the improvements in the sanitary conditions of said premises, and for a judgment of the court, declaring that the sanitary conditions of said property are good and in no manner injurious to the public health; and further, that the defendants were without lawful power or authority to order and compel the plaintiff to make on said premises the improvements ordered by said Director of Health.

To the said petition, the defendants presented the following demurrer:

"Now come the above-named defendants, through the Attorney-General, and demur to the complaint in the

present case, on the following grounds:

"1. That the court has no jurisdiction over one of the defendants in this action, for the reason that there does not exist any legal entity known as 'Junta de Sanidad de Manila.' (See section 21 of Act No. 183 and 5 (e) of Act No. 1407.)

"2. That the court lacks jurisdiction over the subject matter of these proceedings, since an application for injunction cannot be sustained unless some material and irreparable damage is about to be done, and also because the legal remedy of injunction cannot be invoked to prevent a criminal prosecution under a city ordinance, even when that ordinance is null and void.

"3. That there is omission and erroneous joinder of plaintiffs and defendants, for the firm of Ferrer & Codina, agent of the plaintiff, who does not reside in the Philippines, has not been joined with its principal as plaintiffs, and, moreover, because there does not exist any legal entity named 'Junta de Sanidad de Manila,' and Victor G. Heiser is not director of said 'Junta.'

"4. That the complaint does not set forth facts sufficient to constitute a right of action, because paragraph 3 of section 90 of Act No. 190 requires that when a complaint asks for a special remedy, like that of injunction, the basis whereon such remedy is asked should be stated therein, and the complaint in this case does not allege the nullity of any ordinance, execution whereof the court is asked to prohibit.

"5. That the complaint is vague, ambiguous and unintelligible, for it does not allege that no other remedy exists; that the complaint is contradictory in its terms, for paragraph VIII alleges that the Director of Health has no authority to issue the notice and order contained in Exhibit A, filed in this case, and paragraph IX that the court ought to prevent the defendants from compelling and obliging the plaintiff to make the changes and alterations mentioned in Exhibit A, prohibiting a criminal prosecution under municipal ordinances; and further because if the plaintiff is prosecuted for infraction of a municipal ordinance he cannot be caused irreparable damage, aside from the fact that the questions here raised can be raised in defense against said prosecution.

"6. That the petition for relief is vague and ambiguous, because in paragraph (a) it asks for the issuance of a preliminary injunction to prohibit the defendants from executing the order marked Exhibit A, and in (b) it asks the court to declare that the sanitary conditions of the house mentioned therein are good and in no way prejudicial to the public health and that the defendants are not authorized to require the plaintiff to make the changes and alterations ordered in said Exhibit A; for the fact does not appear that Ordinance No. 125 of the city of Manila expressly authorizes the defendants to order the plaintiff to make in said building the alterations mentioned in Exhibit A.

"Manila, P. I., January 24, 1910.

(Sgd.) "IGNACIO VILLAMOR,

"Attorney-General, representing the defendants"

On the 25th of January, 1910, the Court of First Instance of the city of Manila, after considering the facts alleged in said petition, granted a preliminary injunction, as prayed for by the plaintiffs.

Later, on the 11th of March, 1910, the plaintiffs presented an amended complaint, which alleged substantially the following:

"(1) That the plaintiff, Edwin William Case, resides in Paris, France, and is represented in the city of Manila by the firm of Ferrer & Codina, his lawful attorneys in fact, residing at No. 150 Escolta, in said city, and that the defendants, the 'Junta de Sanidad de Manila' and its director, Victor G. Heiser, are residents of said city of Manila;

"(2) That said firm of Ferrer & Codina, as the representative and agent in Manila of Edwin William Case,

received on November 26, 1909, from the defendants a written order dated the 20th of said month, copy of which is attached to the complaint, marked Exhibit A and made a part, thereof, ordering the said Ferrer & Codina to connect with the new sewer system all the sanitary apparatus, except those which receive rain water, of the premises at No. 202 Calle Solana, the property of the plaintiff, Edwin William Case;

"(3) That on January 4, 1910, the said Ferrer & Codina received another communication from the defendants dated December 28, 1909, copy of which is attached to the original complaint, marked Exhibit B, and made a part of this complaint, extending ten days the time for the execution of the order of November 20, 1909;

"(4) That in the year 1902 the plaintiff, Edwin William Case, having received from the defendant 'Junta de Sanidad' a communication, copy of which is marked Exhibit C and attached to the complaint, ordering that he do and complete on the said premises at No. 202 Calle Solana the sanitary work set forth in said communication, executed all of said work and it was approved by said Board of Health and that said work cost the plaintiff P3,110.08;

"(5) That for many years there has existed in the walled city, in which said premises No. 202 Calle Solana are situated, a sewer system constructed for sanitary purposes by the municipality of Manila, which sewer system drains into the bay and has thus far been in good condition and in use, and that all the sanitary apparatus of said premises are at present connected with the said sewer system;

"(6) That the premises in question are manifestly in as good sanitary condition now as immediately after the execution of the said work ordered by the defendant 'Junta de Sanidad' in its communication, Exhibit C, attached to the complaint in this case;

"(7) That the performance of the work directed in the communication from the defendants of November 20, 1909, would cost at least P500 and would cause other additional expenses on account of the work that the city engineer of Manila would have to execute at the expense and risk of the plaintiffs;

"(8) That the plaintiffs, upon the execution of said work, would have to pay thenceforth 50 per cent over the general rate for hydrant water in Manila on account of the consumption thereof on the property at No. 202 Calle Solana;

"(9) That the defendant 'Junta de Sanidad' and its director are absolutely without lawful power and authority to order and compel the plaintiffs to perform the work mentioned in the communication, Exhibit A; and

"(10) That the Ordinance No. 125, approved and published by the Municipal Board of Manila, and invoked by the defendants in their additional memorandum upon the demurrer to the complaint, is null and void in all and each of its parts and is in no manner obligatory, because the Municipal Board of Manila and said defendants are without lawful power and authority to enact, approve, and enforce said ordinance."

The prayer of the amended complaint was to the effect that the court declare the plaintiff firm of Ferrer & Codina entitled to the benefits of said order of January 25, 1910; that the court declare that the sanitary conditions of the premises No. 202 Calle Solana are very good, and in no manner and by no means injurious to the public health; and that the defendant 'Junta de Sanidad' and its director are absolutely without lawful power and authority to order and compel the plaintiffs to perform on said premises the work ordered by the defendants in their communication of November 20, 1909; that the court declare said Ordinance No. 125 to be null and void and in no manner obligatory; and finally, that the court condemn the defendants to the payment of the costs of the case and to grant the plaintiffs any other positive remedy to which they may be entitled in justice and equity.

To the foregoing complaint, on the 12th of July, 1910, the defendants presented their answer, alleging:

"1. They admit the allegations set forth in paragraphs Nos. 1, 2, 3, 4, 5, 6, and 8 of said complaint.

"2. Further answering said complaint, defendants (1) deny that the sewer connection required to be made in

pursuance of the orders referred to in paragraphs 2 and 3 of said complaint would cost the sum of P500 as therein alleged, and state to the court that the reasonable cost thereof would not exceed P100; (2) deny that defendants are not empowered to make the orders in question, and (3) deny that ordinance of the city of Manila, numbered 125, referred to in paragraph 10 of said amended complaint, is invalid owing either to lack of power of the Municipal Board of the city of Manila to enact and enforce said ordinance, or for any other reason.

"3. Further answering said complaint, defendants allege and show to the court that the orders referred to in paragraphs 2 and 3 of said amended complaint were issued in connection with many other similar orders and as a part of a general sanitary plan of the city of Manila to have the premises known as No. 202 Calle Solana, Intramuros, as well as all other premises in the walled city occupied and used by a considerable number of people, connected with the new sanitary sewers which have been recently constructed and completed by the municipality at great expense for the purpose of improving the sanitary conditions within said city. In this connection defendants respectfully state and show to the court that the old sewers, with which said premises are now connected, run on flat and faulty grades, the sewage passing directly through the old moat and other surface channels into the Pasig River; thereby polluting all of said surface watercourses; that the contents of the new or sanitary sewers are pumped from the pumping station on the Tondo beach for a distance of over a mile over the flats into the deep water of Manila Bay; and that according to the present plans adopted by the city of Manila the old sewers are in the future to be reserved for storm or rain water only, in order that the small channels left in the old moat and other watercourses into which said sewers empty may be kept comparatively free from pollution.

"Defendants further represent to the court that it is particularly urgent that said premises No. 202 Calle Solana, Intramuros, be connected with the new sewers, as directed to be done by said orders, for the reason that although almost every house in the walled city of Marilla is equipped with an aseptic tank or modern cesspool which purifies the sewage to a certain extent, said premises No. 202 Calle Solana, Intramuros, have no vault or cesspool, but that the crude sewage (human feces, etc.) from said house enters the old sewer direct, passing thence into the city moat and gradually finding its way by means of a small, sluggish watercourse to the Pasig River, catch basins Nos. 1 and 2 of the order dated January 3, 1902, referred to in paragraph 4 of said amended complaint, being merely small sediment basins which do not interrupt the free flow of crude sewage as above explained.

"Wherefore, defendants pray that the restraining order granted in this case by this court on the 25th day of January, 1910, be set aside, and that plaintiff's complaint and amended complaint be dismissed at the cost of plaintiffs; and they further pray for such other relief as equity and justice may require.'

Upon the issues thus formed by the amended complaint and answer, the cause was set down for trial.

After a consideration of all of the facts submitted, the Honorable Simplicio del Rosario, judge, in a very interesting opinion, in which he discussed the facts and the law relating to the questions presented, reached the conclusion that said Ordinance No. 125 was null and without force, and made the preliminary injunction issued on the 25th of January, 1910, permanent, perpetually prohibiting the defendants from carrying into effect said orders of November 20, 1909.

From that conclusion of the lower court the defendants appealed, after having made a motion for a new trial in the lower court.

The appellants allege that the lower court committed the following errors:

"1. The Court of First Instance erred in declaring that Ordinance No. 125 of the city of Manila is null and void, on the ground that it is unreasonable, unjust, oppressive and opposed to the civil laws and the provisions of the Philippine Bill.

"2. The Court of First Instance erred in declaring that the health authorities are without legal authority or power to require plaintiff to connect his premises with the new Fewer system, except at the expense of the city of Manila, or upon the payment of damages in the amount of the cost to plaintiff of the connection made with the old sewer system in the year 1902.

"3. The Court of First Instance erred in declaring that the plaintiff, Edwin William Case, cannot be disturbed in his use of the connection made by him at No. 202 Calle Solana with the old sewer system in the year 1902 or be deprived thereof, wholly or partially, by the defendants, without the payment of the corresponding damages.

"4. The Court of First Instance erred in granting a permanent injunction against the defendants, thus preventing them from proceeding in the performance of their duties under the provisions of said Ordinance No. 125 of the city of Manila for the protection of the health of the inhabitants of said city.

"5. The Court of First Instance erred in overruling defendant's motion for a new trial."

Before discussing the questions presented by the assignments of error, we deem it advisable to present the questions of fact which the record discloses. The present case presents questions both of fact and of law. The plaintiffs maintain:

- (a) That the premises in question are in a sanitary condition; and
- (b) That the city of Manila had no right or authority to adopt and enforce said Ordinance No. 125.

The defendants allege that the premises are in an insanitary condition and maintain that the city of Manila had authority to adopt and enforce said ordinance.

From the record it appears that there were two hearings during the pendency of the cause in the lower court, at which proof was adduced. The first was when the question as to the right of the plaintiffs to a preliminary injunction was under consideration, and the second when the merits of the cause were investigated. In neither of these hearings did the plaintiffs present any proof whatever in support of the facts alleged in the complaint. At the first hearing the defendants presented two witnesses, Dr. Victor G. Heiser, Director of Health of the Philippine Islands, and W. C. Palmer, assistant sanitary engineer of the city of Manila. At the second hearing the defendants presented Mr. George H. Guerdrum, sanitary engineer of the Bureau of Health.

As was said above, the plaintiffs presented no proof whatever in support of the allegations contained in the complaint. Whatever facts were presented by the defendants therefore stand undisputed in the record. By mutual agreement Ordinance No. 125 was admitted in evidence without objection. Dr. Victor G. Heiser testified with reference to the sanitary condition of the premises in question as follows:

"Q. Are you familiar with the property or lot at No. 202 in Calle Solana, Intramuros?—A. In a general way, yes.

"Q. Please state whether the document Exhibit A in this case was issued by you.—A. Yes, sir.

"Q. Is it true, Mr. Heiser, that the old sewer system in Intramuros now exists?—A. Yes, sir.

"Q. Please describe it to the court and state its nature with respect to sanitary or insanitary conditions.—A. At the present time there exists around and outside the walls of the city a sewer system that constitutes a menace to the public health.

"Q. Please describe to the court the nature and use of the new sewer system of the city.—A. The new sewer system is modern in every way. It is a covered system, offering no menace to the public health; I mean that it is underground ; and one of the principal reasons assigned for this new system is to eliminate the old system.

"Q. Please state the cost of this new sewer system and the time needed to put it into operation.—A. It took

several years to construct, and cost several million pesos.

"Q. Please explain to the court the sewer plan prepared by the health authorities, and in particular the plan of the sewer system in Intramuros. What is desired is the reason for constructing this sewer system.—A. In view of the fact that the walled city is especially congested, and the greater part of the people live in dwelling houses, which are not apartments or hotels and lodging houses, it is difficult to handle the question of hygiene and it is desired that this part of the city be connected immediately with the new sewer system.

"Q. State whether at the present time a general effort has been made for the purpose of connecting the house with the new sewer system.—A. Yes, sir.

"Q. Please tell the court whether in your opinion as a health officer this house in question in this case ought to be connected with the new sewer system.—A. Not only necessary, but also it is imperative, especially in this house mentioned in this case, that it be connected immediately with the new system, on account of the crowd of people that live in said house.

"Q. State whether the old sewer system has been declared by competent authority to be dangerous to the public health.—A. I have informed the division of engineering and the Department of Sanitation that the old system is a menace to the public health.

"Q. Do you know how many live in the house No. 202 Calle Solana?—A. I don't know the exact number, but I do know that many people live there.

"Q. And is that the only reason for issuing the order to the owner of that house to connect its sanitary installations with the new system?—A. The order was issued because the house is in an insanitary condition.

"Q. As soon as the houses in Manila are connected with the new sewer system, what disposition will be made of the old?—A. The old one will be abolished.

"Q. Will it be absolutely abandoned or will it be destroyed?—A. That is the intention.

"Q. What is the present nature of that sewer system, is it a permanent structure, or merely temporary?—A. With reference to the sewer system outside the walls, it is a temporary structure.

"Q. Of what materials?—A. The greater part of wood,

"Q. Is it covered in any way?—A. The greater part is not covered.

"Q. You mean that it is an open ditch around the walls, conveying the feces from Intramuros?—A. Yes, sir.

"Q. How long, Doctor, have those conditions existed in that sewer system?—A. Outside the walls, in the outer part, for several years.

"Q. And the old sewer system that exists in the city of Manila, how long has it existed, the old one?—A. I don't know exactly, but it has certainly existed for many years." George H. Guerdrum, being first duly sworn, testified as follows ;

"Q. State your name, occupation, and residence.—A. George H. Guerdrum, sanitary engineer of the Department of Sanitation, Manila.

"Q. How long have you held that office?—A. Since May, 1907.

"Q. Are you familiar with the building at No. 202 Calle Solana, Intramuros?—A. Yes, sir.

"Q. Can you state to the court the conditions in which this building is, with reference to its connection with the new sewer system, and also with reference to its sanitary installations?—A. The question, your honor, is that the exterior installations connected with the sewer are defective, and are not good conductors of the feces that

come from that building. More or less sanitary installations have been placed inside the house; these sanitary installations are now in a rather defective condition. The question we wish to demonstrate is not exactly with reference to these few defects that exist in the sanitary installation in this house, but the way in which feces that issue from the building ought to be disposed of, which is the duty of the sanitary department. The records of our office show that the sanitary installations inside this house were renewed in the year 1902; at that time, nevertheless, the feces that came from this house were carried away by the old Spanish sewer, by the storm drain.

"Q. How might that have been avoided?—A. That might have been avoided by properly constructing an aseptic vault. These aseptic vaults are constructed in such way that the feces which pass through that vault are filtered, letting the liquid part flow away.

"Q. To what degree, or to what extent is this aseptic vault to which you refer in use here in the walled city?—A. I would like to state that during the three years I have been working in this line, I have examined all the houses in Manila, and only with the exception of some houses beside the Pasig, almost 95 per cent have been connected with these aseptic vaults, long before the termination of the new sewer system.

"Q. Describe to the court with more details the exact purpose of constructing these vaults. (Counsel for the plaintiffs excepted to this question, saying: " I admit that the house has no aseptic vaults, because it is connected with the old sewer system.")—A. The purpose of an aseptic vault is to hold the solid material that comes from these feces issuing from the house, and in a general way to purify it in such manner that the liquid part which afterwards flows through the installations be free from germs.

"Q. And without this vault, where do the feces from this building pass out?—A. Without these aseptic vaults, the feces pass out in that crude form through the Spanish sewer in Calle Solana, and afterwards pass along Calle Real and flow into that open ditch in the Parian Gate.

"Q. What kind of building is this at No. 202 Calle Solana?—A. It is a very large building, of stone and wood, has a frontage, that is, a frontage on Calle Solana, of 15 or 20 meters, and on the Calle San Francisco side, probably about 20.

"Q. To what use is this house put?—A. It was used for several years as a students' dormitory, and before that it was a big hotel known as the 'Hotel de Francia and is now used as a gymnasium.

"Q. What would have been done with regard to the feces which issue from that building, if the ordinance had been enforced?—A. If this order had been enforced the feces that issue from this building would have passed through the new sewer system. This new sewer system was constructed by the city at a cost of several million pesos and after a careful investigation which demonstrated that the old Spanish sewer system was defective and unsubstantial.

"Q. Wherein is it defective?—A. One of the defects of this old system is the grade of the sewer, which is so low that the solid matter of the feces remains in the bottom of the sewer and upon its sides; and the feces that also pass through this old sewer flow directly through these open ditches and also into the Pasig River, which is subject to ebb and flow, this matter is deposited in the estuaries and open ditches of the city, in this way contaminating with germs the greater part of the localities of the city. In the new sewer system this defect in the grade of the sewer has been corrected by establishing stations where the material is pumped to give more flow to the feces, whereby they flow rapidly from a higher to a lower level, and thence, by means of a pump, this material is raised up, these feces, and then again from a lower to a higher level, and so on successively.

"Q. In this new system, what is finally done, what procedure is used with these feces?—A. The crude material is finally ejected by means of a pumping station on the Tondo beach. This is the final pumping station; and from this last pumping station the feces are ejected through pipes laid under the water, more than a mile out to sea, where the current takes them up and carries them away, whence they may not return to the city.

"Q. Has the waterworks system of the city any connection with this sewer system, and if so, what connection?—A. This new waterworks system was constructed in the first place for the purpose of furnishing water; and this new waterworks system brings water to many private houses, and that water is used in the sanitary installations, water closets, and ditches,

"Q. Do there exist in any of the houses that are not connected with this new sewer system facilities for getting this help from the new water system, for the purpose of being able to get rid of the human feces and other filth?—A. Before the construction of this system the old way was to let the water carry these feces to the place where the aseptic vaults are, and from these aseptic vaults, although at greater expense, they used sometimes to take out these feces and put them on board the steamer Pluto and carry them outside the bay, where the material was dumped.

"Q. You are now referring to the properties that are connected with the aseptic vaults?—A. Yes, sir.

"Q. Then, of what use would be this new sewer system if no orders existed for buildings to connect their sanitary installations with the new system, or if they should not make connection?—A. Then it would be of no use.

"Q. Explain to the court.—A. I will explain to your honor the reason for what I have just said, and that is, because the rain water is not allowed, to pass through the new sewer system. The new sewer system is only for the feces gathered from all parts of the city of Manila. I would like to explain to your honor that this crude material not only comes from the feces but for the greater part consists principally of water from this Carriedo system, which mixes the human feces with the filth or material that is taken from the stables, fish entrails, and other things. All this water, after being used by the houses, is mixed with these feces and other matter, which forms what we call the crude material that passes through this new sewer system.

* * * * *

"Q. You have said that the old sewer system empties into open ditches toward the outside of the Parian Gate?—A. Yes, sir.

"Q. How long have these ditches been open?—A. For several hundred years, several centuries. Since the construction of the walls, of those moats.

"Q. Those ditches have never been covered?—A. So far as I know those ditches have never been covered. I only know that recently the Government has filled up a part of these ditches, reducing them merely to a small ditch which is for the flow there of the human feces.

"Q. Does the old sewer of Intramuros, inside the walled city, empty into any estuary?—A. There are several points of discharge; some of them empty through that open ditch, others through the Pasig River.

"Q. But none of the final mouths of that sewer empty into any estuary?—A. These open ditches lead, though in an indirect way, to the estuary, because they empty into the Pasig River and the river flows into those estuaries.

"Q. Do you know how many houses of the walled city are connected with the old sewer?—A. At present and during the last few months, about a hundred houses have removed their connections with the old system.

"Q. But isn't it true that the greater part, if not all, the houses in Intramuros were and are connected with the old sewer system, with the exception of those hundred houses to which you refer?—A. Ninety-nine per cent of the houses here in Intramuros do not discharge the crude material into the old system for this reason, because the greater part of these houses still have the privy, as it was called in the time of the Spanish government, and those that have no privies have an aseptic vault. And this house at No. 202 Calle Solana is one of the few that have direct connection with the old system, without having a privy or an aseptic vault.

"Q. Have those orders issued by the 'Junta de Sanidad' for connection of the house with the new sewer system

been issued to the houses with a privy or an aseptic vault?—A. I would like to explain to your honor that we have issued orders and have tried to carry out these orders in the houses that have had aseptic vaults since 1903, 1904, up to 1906, and this was done for two reasons: one of which is that the construction of these aseptic vaults is merely for temporary or provisional use, pending the construction of this new sewer system; and another reason is that when the aseptic vault is defective, is out of order, we give orders for connection with the new system; and another reason is, when we have an order to compel the houses to connect with the new system of a district, for example, we compel all the houses in a block to connect their installations with the new system, we aren't going to make an exception of one house in each block, so that it should not make connection, all the houses have to make connection. For example, four months ago we issued orders to all the houses in the Escolta, and in that case, all were notified to comply with that order.

"Q. Do you mean to tell the court that inside Intramuros this old system is entirely open?—A. In Intramuros there are many openings in this old system, for example, at the street corners there is generally and ordinarily that iron grating for reception of rain water. In this way it may be said that that crude material is exposed to the air on the street corners."

The foregoing proof shows, beyond question, that the method of depositing the sewage from said premises No. 202 Calle Solana, Intramuros, is insanitary and likely to produce disease and discomfort, not only to the occupants of said house, but to the people of the city of Manila. It would be possible, under the system used, for instance, if a typhoid germ should be deposited in the water-closet system of said premises, for the same to reach the Pasig River, and thence be carried to every one of the numerous esteros of the city and thus be communicated to the thousands of inhabitants who use water from the rivers and esteros for bathing and other purposes. The detrimental effect from such possibilities to the health and comfort of the people of the city can scarcely be overestimated.

From the proof clearly showing that said premises are insanitary, we pass to a consideration of the question whether or not the city of Manila, through the sanitary authorities, had the power to remedy such conditions, in the manner attempted by the defendant in the present case.

The city of Manila is clearly authorized by its charter to enact ordinances. It is thus authorized to legislate upon certain questions which are defined in said charter. These questions are more or less definitely and expressly defined by said charter. The charters of municipalities generally contain powers which are known and included within "the general welfare powers of municipal corporations." We find such a general welfare clause in the charter of the city of Manila (Act No. 183). Section 16 of said charter, among other things, provides that the Board "shall make such ordinances and regulations as may be necessary to carry into effect and discharge the powers and duties conferred by this Act, and to provide for the peace, order, safety, and general welfare of the city and its inhabitants. In addition to the foregoing general powers of the Board, we find enumerated in section 17. of said charter a number of specific powers conferred upon said Board. In paragraph (t) we find that the Board is authorized "to lay out, construct, improve and regulate the use of streets, avenues, alleys, sidewalks, wharves, piers, parks, cemeteries, and other public places; to prevent and remove encroachments from the same; to provide for the lighting, cleaning and sprinkling of streets and public places, * * * To prohibit the throwing or depositing of offal, garbage, refuse or other,offensive matter in the same and to provide for its collection and disposition; to regulate openings therein for the laying of gas, water, sewer and other pipes therein, the building and repair of tunnels, sewers, and drains, and all structures therein and thereunder, and the erecting of poles and the stringing of wires therein, etc."

In paragraph (x) of said section (17) we find that the Board is authorized "to establish and maintain public drains, sewers, latrines, and cesspools."

In paragraph (dd) of said section (17) we find that the Board is authorized "to enforce the regulations of the

Bureau of Health for the Philippine Islands and by ordinance to prescribe fines and penalties for violations of said regulations."

Under paragraph (jj) of said section (17) the Board is authorized "to declare, prevent, and abate nuisances;" while in paragraph (kk) of the same section the Board is authorized "to make, publish, amend and repeal all ordinances, necessary to carry into effect the powers herein granted, and to enforce the same by fines and penalties, within the limits authorized by law"

Section 33 of the charter of Manila provides that the city engineer "shall have the care and custody of the public system of water works and sewers, and all sources of water supply and shall control, maintain, and regulate the use of the same in accordance with the ordinances relating thereto, shall inspect and regulate, subject to the approval of the Board, the use of all private systems for supplying water to the city and its inhabitants, and all private sewers and their connection with the public sewer system."

In, addition to the foregoing general and special powers conferred upon the Municipal Board and the officers of the city of Manila, Act No. 1150 of the Philippine Commission further defines the powers and duties of the Board of Health for the Philippine Islands and of the Municipal Board of the city of Manila, in connection with the preservation of the public health of said city. Section 1 of said Act (No. 1150) provides:

"Subject to the approval of the Secretary of the Interior, the Board of Health for the Philippine Islands, acting in its capacity as a local board of health for the city of Manila, shall draft and forward, through the Secretary of the Interior, to the Municipal Board for enactment, health ordinances for that city. The Municipal Board shall enact the ordinances so forwarded to it by the Board of Health."

Section 3 of said Act (No. 1150) provides that the ordinances to be adopted by the Board of Health may provide for:

* * * * *

"(d) Installation and maintenance of adequate and proper drainage of buildings and premises, including the materials to be used in and the construction of plumbing systems, drains, trappings, water-closets, vaults, latrines, urinals, cesspools, and sanitary fixtures and appliances.

"(e) Proper sanitary maintenance, scavenging, collection and disposal of refuse, garbage, and manure, the removal and disposal of night soil, and the proper construction of receptacles for such substances, subject to the provisions of section 33 of Act No. 183, as amended by this Act.

* * * * *

"(r) Definition, declaration, and prohibition of nuisances dangerous to the public health; location and use of public drains, sewers, latrines, and cesspools, and construction and use of private drains, sewers, latrines and cesspools."

Section 6 of said Act No. 1150 provides as follows;

"Sanitary inspections shall be made under the general supervision and control of the Commissioner of Public Health by district medical inspectors of the Board of Health, by such members of the police force of the city of Manila as shall be designated as sanitary police by the chief of police, and by such sanitary inspectors as may be authorized by law. Sanitary police and sanitary inspectors shall make sanitary inspections under the immediate direction of district medical inspectors, to whom they shall report the results of such inspections: Provided, That the city engineer of Manila or his duly authorized agent shall inspect and supervise the construction, repair, removal, and safety of buildings, and the ventilation, drainage, and plumbing of buildings and premises, and shall report to the Commissioner of Public Health any violation of ordinances relative to

ventilation, drainage, and plumbing: And provided further, That the Board of Health shall have power to make inspections through its duly authorized agents in order to ascertain whether such ordinances are being enforced, and to initiate complaints against violators of such ordinances after consultation with the city engineer."

In pursuance of the general and special powers conferred upon the Municipal Board and the officers of the city of Manila by Acts Nos. 183 and 1150, certain ordinances relating to the question presented in the present case have been adopted.

We find in article 14 of Ordinance No. 86 (Revised Ordinance No. 179) that the Municipal Board has imposed upon the engineer certain duties with reference to the inspection of buildings and the plumbing and sewer system of houses and places. Said ordinance provides that:

"When any premises shall have been so inspected and defects found in the material or plumbing, written notice of such defects shall be served upon the owner or agent of the premises, who shall make the repairs or changes directed within the time specified therein. Failure to comply with the order shall be a violation of this Ordinance" (No. 86).

Said Ordinance (No. 86) in article 18 (Revised Ordinances, section 183) provides for a system of permissible receptacles until the new sewer system, which was at the date of said ordinance under construction shall be completed. Said section 18 (183) provides that until the new sewer system now under construction is in operation the different systems of receptacles for the collection and removal of filth in sanitary installations, to be permitted after the 1st of January, 1907, shall be as follows:

"First. Movable vaults (pail system);

"Second. Dry vaults;

"Third. Filtering vaults with discharge;

"Fourth. Absorbent vaults, with or without discharge.

"Fifth. Aseptic vaults, absorbent or with discharge, or both absorbent and with discharge."

Later said article 18 of Ordinance No. 86 (Revised Ordinances, section 183) was amended by Ordinance No. 120, to read as follows:

"The different systems of receptacles for the collection and removal of filth in sanitary installations, to be permitted subject to the approval of the Director of Health or his authorized representative on and after the first day of August, nineteen hundred and nine, shall be as follows:

"First. Direct discharge into the new sewer system;

"Second. Movable vaults (pail system);

"Third. Dry vaults;

"Fourth. Filtering vaults, with discharge;

"Fifth. Absorbent vaults with or without discharge;

"Sixth. Aseptic vaults, absorbent or with discharge, or both absorbent and with discharge;

"Provided, That the first-mentioned system shall, in future, be obligatory in the case of premises abutting upon a street through which the new sewer system has been laid."

Later, and in pursuance of the policy of the Municipal Board of the city of Manila in preserving health conditions, and for the purpose of making more effectual the ordinances theretofore adopted, on the 27th of September, 1909, Ordinance No. 125 was enacted, which provides in part as follows:

"Section 1. Every building or premises in the city of Manila, shall be connected with the sanitary sewer system when the owner or agent of such building or premises is notified in writing by the official designated by the

Municipal Board or by the Director of Health or his authorized representative that the sewer into which his building or premises can drain is ready for service.

* * * * *

"Sec. 4. Upon receipt of the notice provided for in section one hereof, it shall be compulsory for each owner or agent of a building or premises to have begun, within thirty days from date of such notification, the work of connections from the sanitary sewer to the property line of said owner or agent.

"The connection from the property line to the house fixtures shall be completed by the owner or agent within sixty days after the completion of the connection to be made by the city.

* * * * *

"Sec. 7. Wherever existing house sewers connect with a vault, cesspool, or other similar arrangement, and it is possible to connect with the sanitary sewers, the connection will be made directly with the sewer, and the vault, cesspool, or other similar depository shall be filled in with clean fresh material level with the surrounding ground. Whenever the existing drains serve both for house sewage and for surface drainage, the two shall be separated. House sewage and stable liquids alone shall be permitted to enter the sanitary sewers, and in no case will storm water or surface drainage be allowed to enter therein. Stable drains must be so arranged as to prevent the entrance of storm water." (See chap. 12, sec. 222 of the Revised Ordinances.)

* * * * *

"Sec. 10. Any person or persons, firm, company, or corporation who shall violate any of the provisions of sections four, seven, and nine of this ordinance shall, upon conviction, be punished by a fine not to exceed two hundred pesos, Philippine currency, or by imprisonment not to exceed six months, or by both such fine and imprisonment, in the discretion of the court, for each offense."

In resuming, and by reference to section 18 of Ordinance No. 86 (Revised Ordinances, section 183), it will be noted that during the construction of the new sewer system, certain different systems of receptacles for the filth and sewage of the city of Manila were permitted after the 1st of January, 1907.

By Ordinance No. 120, said section 18 of Ordinance No. 86 was amended. Under the amendment different systems of receptacles for the collection of filth and sewage of the city and the removal thereof were permitted, subject to the approval of the Director of Health, on and after the 1st of August, 1909. By said amendment (Ordinance No. 120), direct discharge into the new sewer system became obligatory in the case of all premises abutting upon a street through which the new sewer system had been laid. It will be noted, therefore, that connection with the new sewer system, under said Ordinance No. 120, did not apply to all premises. By Ordinance No. 125, however, it will be noted that Ordinance No. 120 was amended, requiring every building or premises in the city of Manila to be connected with the sanitary sewer system, when the owner or agent of such building or premises shall be so required in writing, by the official designated by the Municipal Board or by the Director of Health, or his authorized representative, provided that the sewer into which such building or premises may be drained is ready for service.

In the present case it is admitted that the new sewer system into which the sewage from the house in question (202 Calle Solana) may be drained was completed prior to the said notice of November 20, 1909, on which date the plaintiff herein was required to connect the drainage system of his house with the new sanitary sewer system.

From the foregoing provisions of the charter of Manila (Act No. 183) and the amendment thereto (Act No. 1150) it seems clear that the Municipal Board had been expressly authorized to adopt the ordinance in question, and that the defendants herein were duly authorized to require the plaintiffs to do the things demanded of them to be done

in said notice of November 20, 1909, and that by virtue of Ordinance No. 125, the plaintiffs are liable to be punished in the manner prescribed therein for a failure to comply with the terms of said notice.

The plaintiffs contend that said ordinance is unreasonable, illegal, and void. As we observed above, said ordinance was adopted in pursuance of express power conferred upon the city of Manila by the legislative department of the Government. The plaintiffs have not called our attention to any fundamental law which is contravened by said charter or ordinance. The defendants contend that said charter and ordinance are clearly within the police powers of the State, and that there is no fundamental law of the State restraining the power of the city, under the "general welfare clause" of the charter, from adopting: such ordinances as may be deemed necessary to regulate and abate nuisances, and thus to protect the health, peace, and comfort of the inhabitants. The said ordinance being within the express powers conferred by the legislative department of the Government, the courts will not pronounce the same unreasonable, illegal, and void, unless and until it is shown to have contravened or violated some fundamental law. Courts are slow to pronounce statutes invalid or void. The question of the validity of every statute is first determined by the legislative department of the Government itself, and the courts should resolve every presumption in favor of its validity. Courts are not justified in adjudging statutes invalid, in the face of the conclusion of the legislature, when the question of its validity is at all doubtful. The courts must assume that the validity of the statute was fully considered by the legislature when adopted. Courts will not presume a statute invalid unless it clearly appears that it falls within some of the inhibitions of the fundamental laws of the State. The wisdom or advisability of a particular statute is not a question for the courts to determine—that is a question for the legislature to determine. The courts may or may not agree with the legislature upon the wisdom or necessity of the law. Their disagreement, however, furnishes no basis for pronouncing a statute illegal. If the particular statute is within the constitutional power of the legislature to enact, whether the courts agree or not in the wisdom of its enactment is a matter of no concern. Upon the other hand, however, if the statute covers subjects not authorized by the fundamental laws of the land or its constitution, then the courts are not only authorized but are justified in pronouncing the same illegal and void, no matter how wise or beneficent such legislation may seem to be.

Courts are not justified in measuring the opinions of the legislative department of the Government, as expressed in statutes, upon questions of the wisdom, justice, and advisability of a particular law.

In exercising the high authority conferred upon the courts to pronounce valid or invalid a only the administrators of the public the fundamental law of the land. If an act of the legislature is to be held illegal, it is not because the judges have any control over the legislative power, but because the act is forbidden by the fundamental law of the land and because the will of the people, as declared by such fundamental law is paramount and must be obeyed, even by the legislature. In pronouncing a statute illegal, the courts are simply interpreting the meaning, force, and application of the fundamental law of the State. (*U. S. vs. Ten Yu*, supra, p. 1; *State Board of Health vs. City of Greenville*, 98 N. E. Reporter, 1019.)

It is also argued by the plaintiffs that said ordinance is unreasonable, in that it requires another expenditure so soon after the expenditure of a large sum of money, namely P3, 110.08, in the year 1902, for the purpose of complying with an order of the defendants at that time. The plaintiffs allege that to comply with the order of November 20, 1909, would require an expenditure of the additional sum of P500. This fact is denied by the defendants. The defendants allege that the order of November 20, 1909, might be complied with by an outlay of a sum not to exceed P100. Upon this question, however, neither party offered any proof. It is within the possibilities to have orders, of the character of that with which we are dealing, to follow each other, in point of time, so rapidly that the courts would be justified in intervening, by the extraordinary equitable remedy of injunction, to prevent the doing of a positive injustice, under a perfectly legal and valid law. While the courts hesitate to intervene in the

method of enforcing the law by the executive department of the Government, they have a right to insist that even a valid law shall not be enforced in a manner that will amount to practically a confiscation of private property. In the present case, however, viewing all the facts and circumstances, there seems to be no reason for sustaining the contention of the plaintiffs, that the enforcement of the ordinance is being done in an unreasonable manner. The enforcement of the ordinance, under the evidence presented in the present case, is a reasonable application of the same, when we take into consideration the insanitary conditions produced as a result of the failure of the plaintiffs to comply with the order of the defendants. The only changes apparently necessary to make at the present time, in order to comply with the order of the defendants, is simply to connect the old system installed in the house with the new sewer system, at practically a nominal cost. The sanitary fixtures in the house itself apparently need no, change or alteration, in order to comply with the order of the defendants.

In the case of *The Health Department vs. Trinity Church* (145 N. Y., 32, 49; 27 L. R. A., 710, 716; 45 American State Reports, 579, 590), Judge Peckham, who was later an associate justice of the Supreme Court of the United States, in discussing, the necessity of a strict compliance with orders looking to the sanitation of insanitary premises, said:

"Dirt, filth, and nastiness in general are great promoters of disease—that they breed pestilence, contagion, sickness, and death, cannot be successfully denied. There is scarcely a dissent from the general belief on the part of all who have studied the disease that cholera is essentially a filth disease. The so-called ship fever or jail fever arises from filth. Most diseases are aggravated by it."

Every citizen of every community, in civilized society, must bear certain burdens imposed for the good of all. The plaintiffs complain that the expense imposed upon them, by virtue of said order of the defendants, is unreasonable. It has been shown, however, by the proof adduced during the trial of the cause, that the filth and human excrement deposited in the old sewer from said house might reach every one of the numerous esteros in the city of Manila and thus jeopardize the health of the people of the entire city. A simple illustration may show the unreasonableness of the contention of the plaintiffs. Under the law men are not permitted to appear on the streets in public in a nude condition. Might the plaintiffs justify a violation of that law upon the ground that they had purchased expensive suits of clothing eight or ten years before and that it was unreasonable to require them to buy other suits now, even though the first had lost their capacity to hide their nakedness? Could they justify a violation of the law upon that ground—upon the ground solely that it was too expensive? That law is made to protect public morals and public decency. The ordinance is to protect public health. There seems to be little difference in principle between the above example and the present case, so far as the reasonableness of the contention of the plaintiffs is concerned.

The particular ordinance now under consideration was clearly designed to preserve and protect the health, comfort, and convenience of the inhabitants of the thickly populated city of Manila, and therefore, in its scope, falls directly under what is generally known as the police power of the Government. This power of the State has but few limitations when it is exercised to secure the peace, safety health, morals, and the best and highest interests of the public.

Judge Cooley, one of the best and clearest law writers and jurists, in discussing this power, said:

"No definition of the power can be more complete and satisfactory than some which have been given by eminent jurists in deciding cases which have arisen from its exercise, and which have been so often approved and adopted that to present them in any other than the language of the decisions would be unwise, if not inexcusable. Says Chief Justice Shaw: 'We think it is a settled principle, growing out of the nature of well-ordered civil society, that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that his use of it shall not be injurious to the equal enjoyment of others

having an equal right to the enjoyment of their property, nor injurious to the rights of the community. All property in this Commonwealth is * * * held subject to those general regulations which are necessary for the common good and general welfare. Rights of property like all other social and convention rights, are subject to such reasonable limitations in their enjoyment as shall prevent them from being injurious and to such reasonable restraints and regulations established by law as the legislature, under the governing and controlling power vested in them by the constitution, may think necessary and expedient. This is very different from the right of the eminent domain—the right of government to take and appropriate property whenever the public exigency requires it, which can be done only in condition of providing a reasonable compensation therefor. The power we allude to is rather the police power; the power vested in the legislature by the constitution to make, ordain and establish all manner of wholesome and reasonable laws, statutes, and ordinances either with penalties or without, not repugnant to the constitution, as they shall judge to be for the good and welfare of the Commonwealth, and of the subjects of the same. It is much easier to perceive and realize the existence and sources of this power than to mark its boundaries, or prescribe limits to its exercise.

" 'This police power of the State', says another eminent judge, 'extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State. According to the maxim, *Sic utere tuo ut alienum non laedas*, which being of universal application, it must, of course, be within the range of legislative action to define the mode and manner in which every one may so use his own as not to injure others.' And again: (By this) 'general police power of the State, persons and property are subjected to all kinds of restraints and burdens, in order to secure the general comfort, health, and prosperity of the State; of the perfect right in the legislature to do which, no question ever was, or upon acknowledged general principles, ever can be made, so far as natural persons are concerned.' And neither the power itself, nor the discretion to exercise it as need may require, can be bargained away by the State." (Cooley's Constitutional Limitations, Chapter XVI, pages 705, 706; *Commonwealth vs. Alger* (7 Cush. (Mass.), 53, 84); *Thorpe vs. R. R. Co.* (27 Vt., 140, 149).)

In discussing the same question, the late Mr. Justice Field, of the Supreme Court of the United States, in the case of *Crowley vs. Christensen* (137 U. S., 86, 89) said:

"Even liberty itself, the greatest of all rights, is not unrestricted license to act according to one's own will. It is only freedom from restraint under conditions essential to the equal enjoyment of the same right by others."

In the case of *Holden vs. Hardy* (169 U. S., 366, 395) Mr. Justice Brown said:

"It is as much for the interest of the State that the public health should be preserved as that life should be made secure. With this end in view quarantine laws have been enacted in most if not all of the States; insane asylums, public hospitals, and institutions for the care and education of the blind established; and special measures taken for the exclusion of infected cattle, rags, and decayed fruit. In other States laws have been enacted limiting the hours during which women and children shall be employed in factories; and while their constitutionality, at least as applied to women, has been doubted in some of the States, they have been generally upheld."

It is now generally recognized by all civilized States that the legislative department of the Government, under the police powers of the State, is possessed with plenary power to deal with all matters relating to the public, health, morals, and safety of the people, so long as it does not contravene any positive inhibition of the organic law, and providing that such power is not exercised in such a manner as to justify the interference of the courts to prevent positive wrong and oppression.

In discussing this power of the State, the late Mr. Justice Harlan of the Supreme Court of the United States, in the case of *Jacobson vs. Massachusetts* (197 U. S., 11, 31; 3 A. & E. Ann. Cas., 765), said:

"If there is any such power in the judiciary to review legislative action in respect of a matter affecting the

general welfare, it can only be when that which the legislature has done comes within the rule that if a statute purporting to have been enacted to protect the public health, the public morals, or the public safety has no real or substantial relation to those objects, or is, beyond all question, a plain palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution."

This doctrine has also been declared in the following cases: *Mugler vs. Kansas* (123 U. S., 623, 661; 8 Sup. Ct., 273; 31 L. Ed., 205); *Minnesota vs. Barber* (136 U. S., 313, 320; 10 Sup. Ct, 862; 24 L; Ed., 455)"; *Atkin vs. Kansas* (191 U. S., 207, 223; 24 Sup.Ct., 124; 48 L. Ed., 148).

The present is not the first time the courts have been called upon to answer the question whether or not a statute or ordinance is reasonable and legal which requires owners of private property to incur expense in order to remedy an insanitary condition, and thereby preserve the health and convenience of the people. This question has been answered by various eminent jurists and by courts of the highest standing, practically unanimously in the affirmative.

In the case of the Tenement House Department of the City of New York vs. Moeschén (179 N. Y., 325; 70 L. R. A., 704; 103 American State Reports, 910; 203 U. S., 583), the defendant was required by law to change the water closets theretofore used in her premises for another system. In that case, as in the present, the system which had been installed in the house of the defendant had been installed pursuant to an order of the board of health of the city of New York and the mandate of the legislature of the State. The defendant argued that to require her to incur the expense of installing another and new system was, in effect, depriving her of her property without due process of law; that to require the additional expense, in view of the former expense incurred by virtue of an order of the plaintiff, rendered the statute or ordinance unreasonable and therefore unenforceable. The question of the legality of the statute having been sustained in the lower court, it finally reached the supreme court of the State of New York, where the court, speaking through Mr. Justice Bartlett, said, in part (pp. 330, 331) :

"It is not the hardship of the individual case that determines the question, but rather the general scope and effect of the legislation as an exercise of the police power, in protecting the health and promoting the welfare of the community at large.

"The single question is presented in this case whether the legislation under consideration is a lawful exercise of the police power, imposing upon the citizen only such expenses as are reasonable. We are of the opinion that, considering the facts in the case, the language of the section under review, and the expense incurred in making the necessary changes required, that the legislation is a proper exercise of the police power."

In the case of the Health Department vs. Trinity Church (*supra*), Mr. Justice Peckham, in discussing the question of the effect of the additional expense in complying with an order such as was made in the present case, said (p. 43):

"Instances are numerous of the passage of laws which entail expense on the part of those who must comply with them and where such expenses must be borne by them without any hearing or compensation because of the provisions of the law." (*Thorpe vs. R. R. Co.*, 27 Vt., 140-152; 62 American Decisions, 625.)

Many more analogous cases might be cited in support of the doctrine that if the premises are insanitary, the mere fact that the owner of the property is required to incur expense in rendering the same sanitary, can in no sense render an ordinance like the one under discussion unreasonable. (*State Board of Health vs. Greenville* (April 2, 1912) (98 N. E. Reporter, 1019); *Tenement House Department of the City of N. Y. vs. Moeschén* (179 N. Y., 325); *Commonwealth vs. Roberts* (155 Mass., 281); *Health Department vs. Trinity Church* (145 N. Y., 32, 43-45); *Jacobson vs. Mass.* (197 U. S., 11).)

From all of the foregoing, and after a careful consideration of the facts involved in the present case, and the law

applicable thereto, we have arrived at the following conclusions:

- That the Municipal Board of the city of Manila had full power and authority, under the express provisions of the charter, to enact Ordinance No. 125.
- That said Ordinance No. 125 having been adopted by express authority of law, and being a reasonable exercise of the police power of the State, the same is valid and enforceable.
- That by reason of the fact that the sewage and human excrement deposited in the sanitary fixtures of the premises in question (No. 202 Calle Solana) are at present emptied into the old sewer system, the same is insanitary and a menace to the health and comfort of the inhabitants of the city of Manila.
- That by reason of the fact that said premises are in an insanitary condition, the defendants were justified, in pursuance of the provisions of said Ordinance (No. 125), in issuing the order to the plaintiffs contained in the notice of November 20, 1909.

Therefore, and for all of the foregoing reasons, the order of the lower court perpetually enjoining the defendants from enforcing said order was not justified, and the same is hereby revoked and the defendants are hereby absolved from any liability under the complaint presented in the present case. Without any finding as to costs, it is so ordered.

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

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