

**TRINIDAD DE AYALA ET AL., PLAINTIFFS AND APPELLANTS, VS.
ANTONIO M. BARRETTO ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 9966. February 14, 1916*

Ponente: TRENT, J.

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This is a suit for a permanent injunction against the erection and operation of a combined brewery and ice plant on Calle General Solano in the city of Manila, on the ground that it will be a nuisance. From a judgment denying the relief prayed for, the plaintiffs have appealed.

The twenty-two plaintiffs are either residents or property owners on Calle General Solano. Twelve of them are actual residents of the street and of these twelve, six are lessees of property owned by other plaintiffs.

This street connects Echague and Aviles Streets. All three parallel the Pasig River. Echague is almost wholly given over to industrial enterprises, and Aviles also has some factories, etc., upon it, including the San Miguel Brewery. This latter brewery is a long established business, is adjacent to many residences, and is, in fact, closer to some of the plaintiffs than is the proposed brewery. General Solano has long been a fashionable residence street and the dwellings located upon it are large and expensive. At the present day, however, some of these residences are being used for other purposes. There are now upon this street a coal yard, a warehouse, and a cigarette factory, all very near the proposed location of the defendant's brewery, and there are also a public school and a club on the street. Just across the river is located the large power plant of the electric railroad and light company, consuming about 60 tons of coal per day. To the north of this street are located some sawmills and lumberyards and to the west, across the river, are located large warehouses and a large tobacco factory. The street is used by all kinds of freight vehicles and a double street-car track traverses its entire length. Launches, tugs and lighters are continually navigating the Pasig River, which lies to the rear of the south property on the south side of the street was raised P2 per square meter over that on the north side of the street because of its increasing value for manufacturing and industrial enterprises. There was testimony by one of the plaintiffs' witnesses, a real estate expert, that in his opinion the whole of this space would eventually be devoted to manufacturing and other business uses. It is attractive for such purposes by reason of its transportation facilities by both land and water.

Under these facts we do not think that it can be said with entire correctness that the street in question is a strictly residential street. That it is not purely a residence street is clear, and that there are numerous businesses near it in nearly every direction is also clear. There is no doubt that the appropriateness of the locality selected by the defendants as the site of their proposed plant must have considerable bearing upon the question whether the plant will create a nuisance. (Joyce on Nuisances, sections 95 et seq.) It appears that the locality in question is gradually being transformed from a fashionable residence district into an industrial center. In *Eller vs. Koehler* (68 Ohio, 61), it was said:

"All that can be required of men who engage in lawful business is that they shall regard the fitness of locality. In the residence sections of a city, business of no kind is desirable or welcome. On the other hand, one who becomes a resident of a trading or manufacturing neighborhood, or who remains, while in the march of events

a residence district gradually becomes a trading or manufacturing neighborhood, should be held bound to submit to the ordinary annoyances, discomforts and injuries which are fairly incidental to the reasonable and general conduct of such business in his chosen neighborhood. The true rule would be that any discomfort or injury beyond this would be actionable; anything up to that point would not be actionable."

In *Stevens vs. Rockport Granite Co.* (216 Mass., 486) it was said:

"The law of nuisance affords no rigid rule to be applied in all instances. It is elastic. It undertakes to require only that which is fair and reasonable under all circumstances. In a commonwealth like this, which depends for its material prosperity so largely on the continued growth and enlargement of manufacturing of diverse varieties, 'extreme rights' cannot be enforced. One who settles in a district, which possesses natural resources of a special kind, cannot prohibit the development of those resources merely because it may interfere in some degree with personal satisfaction or aesthetic enjoyment. No one can move into a quarter given over to foundries and boiler shops and demand the quiet of a farm. On the other hand, the noisy or noisome factory cannot with immunity invade territory stamped by use for residence.

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"The neighborhood in question is of a mixed character. It is adjacent to the sea, with inlets upon a somewhat bold and rocky shore. On this account it has become increasingly attractive for summer residence. The plaintiffs and others near by, and more at a greater distance, have estates for this purpose. Nature also has planted valuable stone quarries in the vicinity, which have been opened and worked, and are useful not only to their owners but also in centres of population where they give beauty and strength to public buildings. This circumstance renders apposite the words of James, L. J., in *Salvin vs. North Brancepeth Coal Co.* (L. R. 9 Ch., 705, 709). 'If some picturesque haven opens its arms to invite the commerce of the world, it is not for this court to forbid the embrace, although the fruit of it should be the sights, and sounds, and smells of a common seaport and shipbuilding town, which would drive the Dryads and their masters from their ancient solitudes.'"

After a careful consideration of all the evidence of record, we have come to the conclusion that the locality surrounding the site of the proposed plant has not sufficiently the impress of a residential district as to justify us in holding that the plant will be incongruous with its surroundings. This conclusion is made easier in view of the fact that another brewery is in fact closer to several of the plaintiffs than that of the defendants will be. The fact that this latter brewery is not on the same street is immaterial. Distance is what counts in a matter of this kind. Noise, smells, and smoke are no respecters of streets.

Is there evidence of record that the proposed plant will be operated so carelessly as to materially increase the noise, smells, and smoke emanating therefrom? We think not. On the contrary, the evidence is that a brewery, properly run, is not an unbearable neighbor and that the defendants are installing modern machinery in every respect. The evidence upon this point is as follows:

Dr. Stafford testified that the smoke would be very irritating, to say the least, but admitted that he did not know how the proposed plant was to be operated or the kind of machinery that would be used.

Mr. Sellner testified that from his own observation of breweries they were more or less noisy and emitted odors.

Mr. Zobel, one of the plaintiffs and a director and treasurer of the San Miguel Brewery, testified that from his knowledge of that brewery he would say that the machinery in the new brewery would make more or less noise and that there would be smells. He also admitted that he did not know what kind of machinery was to be used by the new plant nor the height of the proposed smokestack.

For the defense, Mr. Strong, a mechanical engineer, who was furnishing the engines and boilers for the new plant, testified that if properly set up they would produce practically no vibration.

Mr. Robinson, city engineer of the city of Manila, testified that considering the height of the proposed smokestacks, the nearby residents should not be materially disturbed by smoke, and that if the machinery was properly set up there should be practically no noise.

Mr. Duffy, chief engineer of the Government ice plant at Manila, testified that he operated three 200-horsepower and one 100-horsepower boilers, consuming approximately 28 to 30 tons of coal per day, but when all the boilers, engines, and machinery were in operation, there was no noise or jar discernible outside the building. Considering the proposed machinery for the new brewery, he was of the opinion that there should be absolutely no noise or jar, and considering the height of the proposed smokestack, no material annoyance from the smoke.

Mr. Liebenow, inspector of hulls and boilers, testified that if the machinery was properly handled, there should be no noise or jar except when the boilers were "blown out," and that there should be very little smoke.

Dr. Newberne of the Philippine Health Service thought that, given the height of the proposed smokestack, the smoke ought to be carried away from the vicinity. From a sanitary standpoint the new brewery would not interfere materially with the comfort or enjoyment of nearby residents, although it might from an esthetic standpoint. His department had never received any complaints concerning the San Miguel Brewery.

Attorney Hamilton testified that while in Covington, Kentucky, he used to pass daily a brewery several times larger than the San Miguel Brewery and never noticed any noises or smells emanating therefrom.

Mr. Van Hoven, claim agent of the Manila Electric Railroad & Light Company, testified that his company consumed about 60 tons of coal per day, and that their smokestack was 172 feet high. They had never received any complaints from the hospital, occupying the island in the river about 600 feet distant, nor from the residents on General Solano.

Mr. Whelan, the engineer in charge of transferring the machinery of the new brewery from Hongkong to Manila, testified that the machinery was in a condition so that when in operation there would be no noise or jar. The smoke-stack was to be so high that there would be no smoke- nuisance. The washing of bottles would be done inside a ease and could not be heard ten feet away. The handling of barrels and cooperage work would not cause any more noise than the handling of any other kind of cargo.

Mr. Barreto, director and secretary of the new brewery company, who had originally constructed the San Miguel Brewery, testified that the cookers, vats, etc., were to be inclosed so that no fumes could escape except through vent pipes in the roof. When he constructed the San Miguel Brewery, located on Calle Aviles, some distance from the new brewery, no complaints were made.

Mr. Schneider, brewmaster of the San Miguel Brewery, a witness for the plaintiffs, testified in rebuttal that the cleaning of bottles always made noise, as well as the cooperage work on the kegs. The smell of boiling beer was not disagreeable to him, but it might be to others who were not accustomed to it. Since the fumes thrown off from a brewery are heavier than air, they always settle, and so it would not matter if they were forced out through the roof. A Mr. and Mrs. Schultz and a Dr. Burke had complained to him about the smoke, noise, and smells from the San Miguel Brewery. The former lived in front of the brewery across the street and the latter lived alongside of it. He had been brewmaster of the San Miguel Brewery for the past ten years.

Mrs. Schultz, for the plaintiffs, testified that while living opposite the San Miguel Brewery she had noticed noises and smells emanating from the brewery and that her husband had complained to the brewery people twice, telling them that it was very noisy and dirty. They lived there in front of the brewery for two years. It was a very nice house and the brewery did not interfere with them particularly.

Mr. Calvo lives in front of the brewery on the opposite side of the street. He himself was never disturbed by the brewery, but they noticed the noises and smells coming from the brewery. It was sometimes necessary to cover the meals to avoid the soot from the smokestacks.

While the testimony of Mr. Schneider, the brewmaster of the San Miguel Brewery, is to the effect that fumes from the beer making will settle to the ground, he does not say what their intensity is. That they could not be great would seem apparent from the fact that this witness recalled only two complaints that he had received from nearby residents of the San Miguel Brewery during his ten years' employment there. Again, Mrs. Schultz and Mr. Calvo emphasized the noise rather than the smells, and it seems from the testimony of Mr. Whelan that the noise of the bottle washing, at least, will not be perceptible outside the building by reason of this work being done inside a case. Hence, the testimony of Mr. Schneider that the noise of the bottle washing could be heard outside the building evidently was based upon the conditions obtaining in the plant where he is employed. For the defense, there is evidence of engineers and others that there will be no noise, vibrations, or smells, and but little, if any, smoke, which will materially affect nearby residents. We think that the preponderating weight of the evidence is to the effect that the new brewery will be operated with a minimum of offense to nearby residents, and that in view of the semi- industrial character of the locality, what noise, etc., is produced, cannot be held to be unreasonable.

It is possible that plaintiffs, or some of them, might prove damages by reason of property depreciation. But at all events, this is not a proper case for the issuance of the extraordinary remedy of injunction.

The judgment appealed from is affirmed, with costs against the appellants. So ordered.

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

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