

[G. R. No. 17151. April 06, 1922]

**A. L. AMMEN TRANSPORTATION CO., INC., PLAINTIFF AND APPELLANT, VS.
VICENTE GOLINGCO, DEFENDANT AND APPELLEE.**

D E C I S I O N

MALCOLM, J.:

The fundamental question in this case is whether or not the amended complaint filed in the Court of First Instance of Albay, on February 2, 1920, states a cause of action. Judge Mina, of the Court of First Instance, held that it did not, and, accordingly, sustained the demurrer, and dismissed the action, with costs against the plaintiff. Said complaint reads as follows:

“Now comes the plaintiff, by its undersigned attorneys, and to the court respectfully shows that on this same date, February 2, 1920, it was notified of the order of this court dated January 24, 1920, sustaining the demurrer and ordering the amendment to the complaint, and in compliance therewith it now amends its complaint and alleges:

“(1) That the plaintiff is a corporation duly organized and constituted and registered in accordance with the existing laws of the Philippine Islands and is exploiting, conducting, and managing for itself a public utility business for the transportation of passengers and freight by means of trucks between several towns of this Province of Albay, and the defendant is of legal age, resident of the municipality of Tabaco, Province of Albay, Philippine Islands, and both have the legal capacity to sue and be sued.

“(2) That the plaintiff corporation has been engaged in the said business of transporting passengers and freight in this province since the year 1912, having invested in said business the capital of one hundred fifty thousand pesos (P150,000) and is now possessed of twenty-six (26) *White* trucks besides the

required equipment and accessories necessary to give service to the public; the plaintiff having complied fully with the requirements of Act No. 2307, as amended, which is the law that creates the Board of Public Utility Commissioners and provides for its duties and rights and for other purposes, having complied also with all the regulations and requisites prescribed by the said Board of Public Utility Commissioners since the creation of said Board.

“(3) That the defendant Vicente Golingco for several years now has been and still is the owner of a public utility business and the said Vicente Golingco has possessed, exploited, managed and conducted the said public utility business, consisting of twelve (12) *White* 1 1/2ton trucks and has placed the said public utility business, from the date of its organization until January 21, 1919, to the purpose of public transportation of passengers and freight by means of the said trucks, exclusively between the districts of Legaspi, municipality of Albay, the municipality of Tiui of this Province of Albay, with the exception stated in paragraph 7 of this amended complaint.

“(4) That on the said 21st of January, 1919, the defendant Vicente Golingco transferred three of the trucks pertaining to his public utility business to the route Legaspi, Albay, to Naga, Ambos Camarines, P. I., and began to operate one of said 3 trucks between Legaspi and Guinobatan; one truck to Legaspi-Ligao and the other to Legaspi-Polangui, all within the Province of Albay and situated in the route between Legaspi, Albay, and Naga, Ambos Camarines; the said trucks, from the aforesaid date until the preliminary injunction in this case was issued, were making regular, and continuous trips between the said towns and transporting passengers and freight in such a way that the defendant was illegally competing with the plaintiff’s business which has been legally in operation between the towns mentioned since the year 1912 and since that time until now has been giving the public a regular, constant, adequate, and permanent service for the transportation of passengers and freight.

“(5) That since January 29, 1920, the defendant again resumed the operation illegally of more than three trucks of his public utility business by placing them in the routes of different towns situated in the line between Legaspi, Albay, and Naga, Ambos Camarines.

“(6) That before operating the aforesaid trucks of his public utility business

referred to in the two foregoing paragraphs, between the municipalities already mentioned, the defendant had not obtained previously from the Public Utility Commission a certificate to the effect that the operation of his trucks between the municipalities aforesaid or between any other municipalities in the line from Legaspi, Albay, to Naga, Ambos Camarines, and the authority to operate some or all of the trucks of his business will promote adequately and conveniently the public interests as required by Act No. 2694

“(7) That it is true that the defendant on or about the year 1914 before Act No. 2694 became a law on March 9, 1917, had some of his trucks operating in the line from Legaspi, Albay, to Naga, Ambos Camarines, but later, about the beginning of the year 1916, the defendant entirely abandoned said route and stopped operating his trucks on the same and since then he has not operated any of his public utility trucks between the towns aforementioned by making regular and continuous trips so as to establish again and maintain a permanent service of transporting passengers and freight in illegal competition with the herein plaintiff, as said defendant is now trying to do in the manner and form above described and that on the said 9th day of March, 1917, the defendant was not operating any public utility business for the transportation of passengers and freight in the aforesaid route from Legaspi, Albay, to Naga, Ambos Camarines.

“(8) That in view of the abandonment in the beginning of the year 1918 on the part of the defendant of the line from Legaspi, Albay, to Naga, Ambos Camarines, the defendant since the month of February, 1916, has been increasing the number of trucks of his public utility business for the purpose of meeting the requirements of traffic and in order to promote conveniently and adequately the public interests and at the present time he has in operation fourteen trucks more than he had in February, 1916.

“(9) That the defendant having abandoned any right that he had or might have had to operate his trucks in said line by virtue of the existing laws prior to March 9, 1917, and not having obtained later the required certificate of public necessity from the Public Utility Commission authorizing him to own, exploit, manage and conduct a business of public utility between the towns situated in the line from Legaspi, Albay, to Naga, Ambos Camarines, the operation by the defendant of his trucks or any of them is illegal and contrary to law.

“(10) That the legal operation by the defendant of his aforesaid trucks of public utility, that is, the transportation of passengers and freight between the different towns situated in the line from Legaspi, Albay, to Naga, Ambos Camarines, has caused and is causing damages to the plaintiff corporation in the amount of not less than thirty pesos (P30) per day of operation per truck and will continue causing damages to the plaintiff in the said sum each day that the defendant may be continuing the operation of his aforesaid trucks of public utility.

“For all the foregoing, the plaintiff prays that the court render judgment against the defendant and that a preliminary injunction issue immediately against the said defendant, his attorneys, agents, or representatives prohibiting them from continuing the operation of the defendant’s trucks of public utility or any of them between the towns of the Province of Albay situated in the line or main road from Legaspi, Albay, and Naga, Ambos Camarines, also prohibiting them during the pendency of this action from transporting passengers and freight and that after due trial, the injunction be made permanent, enjoining the defendant, his attorneys, agents, and representatives, from operating the said trucks or any truck of his public utility business between the towns of the Province of Albay situated in the line or main road from Legaspi, Albay, to Naga, Ambos Camarines; and prohibiting them further to engage their trucks or any of them for the transportation of passengers and freight in the aforesaid route until the said defendant may obtain from the Public Utility Commission the certificate required by section 14 of Act No. 2694; and that the defendant be also sentenced to pay to the plaintiff as damages/ an amount of not less than thirty pesos (P30) per day per truck in operation since January 21, 1919, until the day on which the defendant cease to operate the said trucks of public utility; and that he be sentenced furthermore to pay the costs of this action and that the plaintiff be granted any other relief that may seem to the court just and equitable.”

In considering the appeal perfected by the plaintiff, we believe that the following propositions can be accepted without debate:

(1) Under Philippine organic law, in relation to Philippine statutory law, at least concurrent jurisdiction with the Public Utility Commissioner remains in the courts to the end that special proceedings, such as injunctions, may be heard and tried in the courts.

(2) If the rights which any public utility is exercising pursuant to lawful order of the Public Utility Commissioner, has been invaded by another public utility, it is not essential that an action be maintained by the Government of the Philippine Islands under section 197 of the Code of Civil Procedure, but, in appropriate cases, actions may be maintained by the complainant public utility.

(3) Owners of public utilities operating under the supervision of the Public Utility Commissioner have the right to maintain appropriate actions against other public utilities who have not been authorized to operate in competition with the complainant.

(4) All public utilities which desire to operate in the Philippine Islands must first obtain from the Public Utility Commissioner a certificate to the effect that the operation of said public utility, and the authorization to do business, will promote the public interest in a proper and suitable way, unless the business was in operation by the public utility at the time the Public Utility Law went into effect—which is not the case before us, because while the defendant public utility was in existence prior to the passage of Act No. 2694, it began to operate on new routes after the passage of said Act without first securing the certificate provided by section 14 of the Act.

In conformity with the foregoing, we find reversible error in the judgment of the trial court dismissing the action. The amended complaint states a cause of action and the demurrer to the same should not have been sustained. Judgment is reversed, and the record shall be returned to the court of origin for further proceedings as provided by law. Without special finding as to costs in this instance, it is so ordered.

Araullo, C. J., Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

Judgment reversed, case remanded for further proceedings.