102 Phil. 1

[G.R. No. L-9090. September 10, 1957]

EASTBOARD NAVIGATION, LTD., PLAINTIFF AND APPELLANT, VS. JUAN YSMAEL AND COMPANY INC., DEFENDANT AND APPELLANT.

D E C I S I O N

BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Manila ordering defendant to pay to plaintiff the sum of $53,037.89 as awarded, by a board of arbitrators on June 20, 1950 and confirmed by the District Court of New York, U.S.A. on August 15, 1950, with legal interest thereon from December 5, 1950 until its payment, and the costs of suit.

The facts involved in this case which are necessary to be considered in this appeal are stated by the trial court in its decision which we find to be substantially correct. They are: "On July 85, 1949, Atkins, Kroll & Co., Inc., Manila, wrote defendant Juan Ysmael & Co., Inc. (letter Exh. 1) advising that plaintiff Eastboard Navigation, Ltd., of Toronto, Canada, owners of the S/S EASTWATER, 'have accepted your terms of payment and are agreed to charter the S/S EASTWATER to Juan Ysmael & Company, Inc., Manila, (to load a cargo of scrap iron in the Philippines for Buenos Aires) under the following terms and conditions: * * * (10) *Clause Paramount*: Terns and conditions for this Charter Party not explicitly or otherwise stated in this letter of confirmation are to be as per general conditions of regular Charter Party form.. Will you kindly signify confirmation of the above terms by signing the original and four copies of this letter? A formal copy of the Charter Party document will be forwarded to you within a few days. Atkins, Kroll & Co., Inc., Manila, acting solely as agents for and in behalf of the owners of the S/S Eastwater by cable or letter authority, sincerely hope we may be of service to all parties concerned and that the cargo will go forward as scheduled in a satisfactory manner.' Defendant signed said letter thus, 'For Charter Party: Juan Ysmael & Co., Inc., K. H. Hemady, President.' On the same date, July 25, 1949, charter party agreement (Exh. A) was

executed containing, besides the regular charter party printed form, a type written clause reading: 'Clauses Nos. 16 to 31 inclusive and U.S.A. Clause Paramount, War Risks Clauses 1 and 2, Now Jason Clause and Both-to-Blame Collision Clauses, as attached, to to coreidered as fully incorporated herein and to form part of this Charter Party.' Clause No. 29 reads as follows:

> 'It is mutually agreed that should any dispute arise between Owners and Charterers, the natter in dispute shall be referred to three persons at Mew York for arbitration, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men. Should the two so chosen not be able to agree who the third arbitrator should be, then the New York Produce Exchange is to appoint such third Arbiter. The amount in dispute shall be placed in escrow at New York subject to the decision of the arbitrators.'

"On September 8, 1949, Atkins, Kroll & Co., Inc., Manila, again wrote defendant company as follows (letter Exh. 3):

> 'We are today in receipt of the following cable instructions from our principals the Eastboard Navigation Ltd., regarding the release of your bills of lading covering balance of your scrap iron loaded at Manila:
>
> > "Re Yours sixth agree release bladings against full payment of freight and guarantee by Irving Trust New York fifteen thousand dollars covering possible demurrage to be settled in accordance with ruling of arbitration board New York please have Ysmael immediately nominate their arbitrator'
>
> 'In order to facilitate your negotiations of your documents with the Bank of America we shall appreciate very much your putting up a guarantee by Irving Trust New York for the sum of US $15,000,00 and to nominate the name of your arbitrator immediately,1

"On October 1, 1949, the Bank of America, Manila Office, wrote defendant company (letter Exh. 3-A) as follows:

> 'In accordance with verbal instructions of your President, Mr. K. H. Hemady, your draft for $76,354.55 and attached documents were airmailed this morning to the above bank together with the relative bills of lading which were surrendered to us by Atkins Kroll & Co., Inc., for account and by order of Eastboard Navigation, Ltd, of Toronto.
>
> 'The documents, which were sent for collection, cover the third and last shipment under the assignment made to you by Mr. Hector Corvsra under the terms of the subject credit and cover:
>
> * * * * * *
>
> 'Deposit account Demurrage under Arbitration – $15,000,00
>
> * * * * * *
>
> 'We have requested the Irving Trust Company to advise us by cable when the above amounts have been paid. In the event of non-payment, we have requested that they deliver the bills of lading to the Eastboard Navigation Ltd., under cable advice.
>
> 'We expect to be able to report to you on the above-described collection sometime next week.'

"On December 3, 1949, defendant company wrote the Bank of America (Manila) (letter Exh. 3~B) as follows:

> 'Please transmit by telegraphic transfer to Irving Trust Company, New York, the amount of Ten Thousand Dollars ($10,000.00), for the account of Eastboard Navigation Ltd., Toronto, Canada, to be held as deposit for demurrage due the S/S 'Eastwater, together with the $15,000.00 previously remitted to them. The amount shall be held pending result of the arbitration of the dispute between this Company and Eastboard Navigation.'

"The dispute mentioned in its preceding letter having arisen, under date of April 5, 1950, the defendant cabled Attys. Manning, Harniscii and Hollinger of New York City as follows : 'Through recommendation of Mr. Morris Lipsett we request you kindly present our case before Arbitration Board re charter vessel S/S *Eastwater Writing*" (Exh. 2). And in its letter Exhibit 2-B of the same date to said attorneys, defendant confirmed its request as follows:

> 'Our good friend, Mr. Morris S. Lipsett, of the Lipsett Pacific Corporation, 80 Wall Street, New York, has highly recommended your law firm to us to present our case to the arbitrators in a case we have with the Eastboard Navigation Co., Ltd., in connection with our charter of their vessel the S/S 'Eastwater' . May we, therefore, request you to act as such attorney for us, and you may bill us accordingly for your services in the matter.
>
> 'We have already spent a considerable sum on this case, not to mention the inconvenience it has caused us, and we are most anxious that the matter be terminated as soon as possible.
>
> 'Pertinent papers and documents regarding the matter have been turned over to Mr. Lipsett, and we have requested him to turn those over to you for your purposes. Should you, however, need further information regarding the matter, or should you need our assistance at this end, please feel free to ask us.

"On May 23, 1950, Messrs. Manning, Harnisch and Hollinger, acting as attorneys for defendant Juan Ysmasl & Co., Inc., executed with the attorney for plaintiff East board Navigation Ltd., arbitration agreement (Exh. B) which reads:

> We, the undersigned, hereby mutually covenant and agree to submit, and hereby do submit to Charles P. Lambert, Richard Nathan and Donald E. Simmons, as Arbitrators, for their adjudication and award, a controversy existing between us relating to the liability, if any, of the undersigned, Juan Ysmasl & Co., Inc., charterers, to the undersigned, Eastboard Navgation, Ltd., owners of the S/S Eastwater, for demurrage, discharging expenses, wharfage, extra meals agency fees, crew overtime and miscellaneous expenses, under charter party of the S/S Eastwater dated July 25th, 1949.

> 'And we mutually covenant and promise that the award to be made by said Arbitrators or by a majority of them, shall be well and faithfully kept and observed by us.
> 'And by each of us.
>
> 'And it is hereby further mutually agreed that a judgment of the United States District Court for the Southern District of New York shall be rendered, upon the award made pursuant to this submission.
>
> 'WITNESS' our hands this 23rd day of May, 1950.'

"Pursuant to said arbitration agreement, the three arbitrators in New York City passed upon the stifferences between the plaintiff and the defendant 'after having heard and received evidence submitted by both sides', and rendered their arbitration decision (Exh. C). This arbitration decision was presented by plaintiff to the U.S. District Court, Southern District of New York, for confirmation, (Admiralty No. A165-362) and said Court confirmed the said arbitration, decision in its Order and Final Decree of August 15, 1950, (Exh. D) ordering 'that the aforesaid award of arbitrators be and the same hereby is in all respects confirmed1, and 'that the said movant, Eastboard Navigation, Ltd., recover of and from the said respondent, Juan Ysmel & Company,' Inc., the sum of $53,037.89, with interest thereon from the 20th day of June, 1950, amounting to $488.24, together with the movant's costs taxed in the sum of $40.00 and amounting in all to the sum of $53,566.13, with interest thereon until paid.'"

Plaintiff brought this action to enforce this aforesaid "Order and Final Decree" pursuant to Section 48, Rule 39, of the Rules of Court which, among others, provides "In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact."

Defendant, in its answer, set up the defense that said judgment cannot be enforced in this jurisdiction because (a) when the New York District Court acted on the case it did not have jurisdiction over the person of defendant; and (b) the proceeding where said judgment was rendered was summary, there was no trial on the merits and defendant did not give its consent thereto. Defendant contends that that judgment does not come within the purview of Section 48, Rule 39, of the Rules of Court.

During, the hearing, the parties agreed as to the following facts: That defendant is a corporation the stock of which is held as follows: Magdalena Hemady, 3,459 shares; K. H. Hemady, 6,939 shares; Felipe Ysmael, 770 shares; Carlos Kernel Ysmael, 830 shares; Juan Ysiaael y Cortes, 1 phnrs; an" Gatoiel Ysmacl, 1 share, or a total of 17,000 shares; that plaintiff, during the time material to this case, was not licensed to transact business in the Philippines;, that this is the first business transaction made locally by plaintiff, although previously plaintiff's vessel was chartered by the National Rice and Corn Corporation to carry rice cargo to the Philippines, the charter party thereto being dated April 5, 1949; that the charter party Exhibit A is one approved by the Documentary Council of the Baltic and, White Sea Conference cad that one of its standard stipulations is a clause regarding arbitration; that K. H. Hemady, now deceased, as president and general manager of defendant, for 25 years, had entered into numerous other contracts with third parties in representation of defendant all of which were never ratified nor repudiated by its Board of Directors; that one of the arbitrators Richard Nathan was appointed by defendant corporation, another one Donald E. Simmons was appointed by plaintiff f and these two appointed a third ore Charles F. Lambert; and that the defense that K. H. Henuidy mas not authorized by the Board of Directors of defendant corporation to enter into the arbitration agreement was raised for the first time in these proceedings, which means that it was not raised in the arbitration proceedings in New York, nor in the proceedings held to confirm the and in the U.S. District Court of the Southern District of New York. In addition to this stipulation of facts, plaintiff and defendant submitted documentary evidence.

The lower court rendered judgment off inning the decre of the New York District Court and ordering that It be enforced, from which defendant appealed. Plaintiff likewise appealed but only on the score that the court did not declare defendant liable for the amount of the foreign exchange tax due on the judgment and for the fees it agreed to pay to its counsel for this litigation. We will discuss separately the issues involved in this joint appeal.

It is plaintiff-appellant's contention that, if the decision of the lower court is affirmed, it will have to pa 7 the foreign exchange tax on the amount awarded therein if the same is to be remitted to its home office at Ontario, Canada; that it should have been exempted from said tax had defendant paid the award immediately after it had been confirmed by the U.S. New York District Court because at that time Republic Act No. 601 had not yet been enacted: and that because of defendant's undue refusal to pay the same which gave rise to said, tax liability, plaintiff will have to shoulder the same. This is a loss which defendant shall pay, plaintiff contends, under. Article 1107 of the old Civil Code.

In the first place, there is no clear proof on record that defendant's refusal to pay the award is due to fraud or bad faith. Plaintiff failed to present any evidence in this regard. On the contrary, the stand of defendant does not seem to be entirely groundless as evidenced by the several defenses it set up in its answer which give a clear perspective of the reasons why it declined to pay the award which plaintiff demands. In the second place, it would appear that, if there is any agreement to pay the interest obligation in a currency other than the Philippine currency, the same is null and void as contrary to public policy (Republic Act No. 529), arid the most that it could be demanded is to pay said obligation in Philippine currency to be measured in the prevailing rate of exchange at the time the obligation was incurred (Section 1, *Idem*.). Finally, inasmuch as the decree of the New York District Court which is now sought to be enforced does not specify the place where the obligation should be paid, the judgment debtor, herein defendant, may discharge the same here in Manila which is its domicile. We find therefore no valid reason for upholding the claim that defendant, should it be ordered to pay the award, pay the foreign exchange tax required by law at the time the obligation fell due. At any rate, this question would appear now to be moot for the reason that said tax has already' been abolished (Republic Act No, 1394).

The next issue raised by plaintiff-appellant refers to the failure of the lower court to award to it the fees which it agreed to pay to its counsel in connection with the present litigation under Article 2H08, sub-paragraph 5, of the new Civil Code. The,alleged sub-paragraph allows a winning party to recover attorneys fees "where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim." From this it would appear that to entitle plaintiff to attorneys' fees on this ground, it is necessary that it be proven that defendant acted "in gross and evident bad, faith" in refusing plaintiff's claim, since, as we have already stated, plaintiff did not present any evidence on this point, the lower court did not err in denying plaintiff's claim on this score.

Coming now to the appeal of defendant, we may restate the main issues raised in its assignment of errors as fol- lows: (a) whether or not defendant agreed to submit to compulsory arbitration its dispute with plaintiff in the charter party agreement executed between them, and, in the affirmative, whether such agreement is valid in this jurisdiction; (b) whether or not the arbitration agreement, Exhibit B, is binding on defendant and, in the affirmative, whether or not the arbitration proceedings as well as the arbitrators' decision, are valid and binding on defendant; (c) whether or not, on the assumption that said proceeding; and decision are valid, the decree of the U.S. District Court, Southern District of New York, sitting as Admiralty Court, is valid and enforceable

in this jurisdiction; and (d) whether or not plaintiff, being a foreign corporation without license to transact business in. the Philippines, has capacity to sue in this jurisdiction.

(a) It should be recalled that as a confirmation of the correspondence had between plaintiff's agent in the Philippines and. defendant, represented by its President K. H. Hemady, the former sent a letter advising the latter that plaintiff had accepted its offer to charter plaintiff'? vessel "*S/S Eastwater*" to load a cargo of scrap iron in the Philippines for Buenos Aires under certain terms and conditions therein enumerated (Exhibit 1), In this letter it is stated that the "terms and conditions for this charter party not expressly or otherwise stated in this letter of confirmation are to te as per general conditions of regular charter party form", a formal copy of which would be forwarded to defendant. This was done, and the form above referred to is Exhibit A which was duly signed by plaintiff, through its president, and by defendant, through its president and general manager, K. H. Hemady. This document is in printed form with the blanks properly filled out, at the bottom of which appears a typewritten clause which states, "Clauses Nos. 16 to 31 inclusive and U.S.A. Clause Paramount, War Risks Clauses 1 and 2, Now Jason Clause and Both-to-Blame Collision Clauses, *as attached, to be considered, as fully incorporate herein and to form part of the Charter Party.*" (Italics supplied) Both the printed form and the typewritten sheet containing Clauses Nos. 16 to 31 inclusive, Were signed by the contracting parties. Clause 39 in the typewritten form, refers to the arbitration agreement, and reads as follows:

> "29. It is mutually agreed that should any dispute arise between Owners and the Charterers, the matter in dispute shall be referred to three persons at New York for arbitration, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court. The Arbitrators shall be commercial men. Should the two so chosen not be able to agree who the third Arbitrator should be, then the New York Produce Exchange is to appoint such third Arbiter. The amount in dispute shall be placed in escrow at New York, subject.to the decision of the arbitrators."

It is now' contended that while K.H. Hemady had signed Exhibit A which contains a typewritten clause at the end of the document, as well as the typewritten sheets attached thereto, wherein is embodied Clause 29 which refers to the arbitration agreement, the fact

however is that Hemady signed said papers without reading the same and solely on the assumption that they merely formalized the terms and conditions already agreed upon in the letter of confirmation Exhibit 1. It is emphasized that Hemady never intended to submit any dispute that may arise out of its charter party to compulsory arbitration, much less to recognize the findings or award of the arbitrators that may be appointed by the parties as final and not subject to review by our courts. It is further contended that Hemady signed the document Exhibit A with the understanding that the same would merely supplement with its "general conditions" the terms and conditions not stated in the letter of confirmation Exhibit 1, and the typewritten clause attached to the document Exhibit A, specially that which provides for foreign arbitration, refers to special conditions which were not intended, by the parties nor included in the preliminary negotiations conducted between them. This stand of Hemady, it is contended, is further corroborated by the fact that when he received from his lawyers the arbitration agreement Exhibit B, he refused to sign it because it was never his intention to submit his dispute with plaintiff to compulsory arbitration.

There are many circumstances on record which discredit this claim of defendant-appellant. To begin with, it appears that the charter party agreement Exhibit A is one the original of which tabs approved by the Documentary Council of the Baltic and "White Sea Conference in 1922 and one of its standard clauses is the arbitration clause and as such the latter, though in typewritten form, is considered as integral part of the agreement. This fact was admitted by defendant's counsel. In the second place, Hemady, as it would appear, signed not only the printed portion of the charter party agreement, but the typewritten portion as well, which contains the arbitration clause, and it cannot be believed that a businessman of long experience as he was, would affix his signature to a document involving a very important transaction without knowing its contents and would do so only on the assumption that it contained mere formalized statements of the terms and conditions of the latter of confirmation Exhibit 1. Moreover, if Hemady did not intend to submit his dispute with plaintiff to arbitration as defendant now contends, why did he appoint Messrs. Manning, Harnisch and Hollinger as lawyers to represent defendant corporation in the arbitration proceedings to be held in New York? (Exhibits 2 and 2-B) why did he instruct the Bank of America on two different occasions to transmit to the Irving Trust Company of New York the total sum of $25,000 to be "held pending result of the *arbitration* of the dispute between this company (Ysmael) and East board Navigation, Ltd.?" (Exhibit 3-B) If defendant corporation did not really intend to submit its dispute with the plaintiff to arbitration, the logical step it should have taken would be to repudiate

the act of its President Hemady, but far from doing so, it approved and ratified it by subsequent acts which clearly indicate that it was agreeable to said arbitration.

(b) The claim that the arbitration proceedings conducted in New York as well as the award of the arbitrators cannot bind defendant corporation for the reason that the same were conducted without its authority or contrary to its instructions, is also untenable. It is true that when defendant's counsel sent the document Exhibit B to its President K.H. Hemady for his signature, the latter returned it without his signature but that defendant's counsel nevertheless signed the document in behalf of defendant and submitted it to the Board of Arbitrators, and this act is now alleged as one undertaken without defendant's authority or one that would indicate that defendant did not agree to submit the dispute to arbitration. But there is one circumstance which justifies the action taken by defendant's counsel in New York. Note that said document Exhibit B is *mistakenly* termed "arbitration agreement", for it is not so. A perusal thereof would show that it is a mere agreement to submit the dispute to the arbitrators for arbitration and arbitrators would not know what to arbitrate and decide. The arbitration agreement is Clause 29 of the charter party Exhibit A. The fact that Hemady returned said document' Exhibit B unsigned is of no significance for such is a mere implementation of the authority already previously given by defendant to its counsel Messrs. Mannings Harniseh and Hollinger "to present our case to the arbitra- tors in a case we have with the Bastboard Navigation Co,, Ltd., in connection with our charter of their vessel the S/S "Eastwater", contained in its letter dated April 5, 1950 (Exhibit 2-B). The signing of said document Exhibit B by defendant's counsel is therefore perfectly within the scope of the authority given than, by defendant corporation.

But defendant insists that the decision of the arbitrators is not binding upon it because (1) none of the arbitrators who acted thereon in accordance with the arbitration agreement had been appointed by defendant, and (2) even if the appointment of Attys. Manning, Harnisch and Hollinger to represent defendant before the arbitration board would be considered as an authority to submit their dispute to arbitration, the decision of the arbitration board is never the less void because it was not in accordance with the condition of said submission that the arbitrators consider only claims or awards not in excess of $25,000.

The claim that none of the three arbitrators who acted on the dispute was appointed by defendant, or under its authority, is untenable, for the same is disproved by the evidence. Thus, during the trial of this case the parties agreed as to certain facts which

appear to be not disputed among them being that one of the arbitrators who acted in New York on the case, Richard Nathan, *was appointed by authority of dependant corporation*, and this appears to be supported by the decision of the New York District Court. Thus, in said decision it appears that when the case was called for hearing both parties were represented by counsel who submitted documentary evidence among which (1) copy of the authorization signed by defendant corporation empowering one Morris E. Lipsett to appoint a substitute arbitrator in its behalf, (2) copy of a letter of said Morris E. Lipsett designating Richard Nathan as arbitrator, and (3) copy of the letter of Richard Nathan accepting his appointment as arbitrator (Exhibit D). Note that Mr. Morris E. Lipsett is the same person who, according to K.H. Hemady, recommended Messrs. Manning Harnisch and Hollinger to be his lawyers in the arbitration case in New York: and that because he was his good friend Hemady accepted his recommendation (Exhibit 2-B). On the strength of this evidence, we cannot therefore take seriously the contention that the person, Richard Nathan, who acted as arbitrator in behalf of respondent, did so without the authority of the latter.

Of course, defendant now contends that the decision of the arbitrators can have no binding effect on it because it was rendered without first obtaining its written conformity or approval, or without its lawyer having first submitted the matter to it for consultation, in accordance with the instruction it has Given, in its letter dated April 20, 1950 (Exhibit 2- C), but certainly, such instruction, if any, is preposterous under the circumstances, for to allow that to prevail would be to defeat the very purpose of the arbitration. The proceeding would be purposeless for no award, can be obtained if the same should be made dependent upon the instruction or approval of any of the parties.

The contention that defendant corporation has limited its agreement to arbitrate to an amount not exceeding $25,000 cannot also be sustained. Such claim is not borne out by the evidence for neither the cable nor the letter which defendant sent to its lawyers in New York contains any statement limiting their authority to represent it to disputes not exceeding $25,000. In other words, there is no evidence whatsoever in the record showing; that Mr, Hemady understood, or was made to understand, that the arbitration proceeding "would, be conducted solely for the purpose of friendly adjustment of disputes limited to and not exceeding the amount of $25,000." Moreover, the aforesaid deposit merely represents an estimate of the amounts that may accrue to plaintiff for demurrage pursuant to the charter agreement while the vessel was in transit from Manila to Buenos Aires and does not include any additional demurrage that may be incurred while the vessel is docked in Buenos Aires waiting for the unloading of the cargo. To sustain

defendant's contention, would be to defeat the purpose of the arbitration which is to settle all disputes that may arise out of the contract in connection with the voyage. It cannot therefore be pretended that the arbitrators acted beyond the scope of their authority.

As a corollary to the question regarding the existence of an arbitration agreement, defendant raises the issue that, even if it be granted, that it agreed to submit its dispute with plaintiff to arbitration, said, agreement is void and without effect for it amounts to removing said dispute from the jurisdiction of the courts in which the parties are domiciled or where the dispute occurred. It is true that there are authorities which hold that "a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitrators and to then, alone, is contrary to public policy and cannot oust the courts of jurisdiction" (Manila Electric Co. v. Pasay Transportation Co., 57 Phil., 600, 603), however, there are authorities which favor "the more intelligent view that arbitration, as an in- expensive, speedy and amicable method of settling disputes, and as a means of avoiding litigation, should receive every encouragement from the courts which may be extended without const ravening' sound public policy or settled, law" (3 Am. Jur., p. 835). Congress has officially adopted this modern view when it reproduced in the new Civil Code the provisions of the old Code on arbitration. And only recently it approved. Republic Act No. 876 expressly authorizing arbitration of future disputes. Thus Section S of said Act provides:

> "SEC, 2. *Persons and matters subject to arbitration.* – Two or more "persons or parties may submit to the arbitration of case or more arbitrators any controversy existing between them at the time of the submission and which may be the subject of an action, or the parties to any contract may in such contract agree to settle by arbitration a controversy thereafter arising between them. Such submission or contract shall be valid, enforceable and irrevocable, save upon such grounds as exist at law for the revocation of any contract."

Considering this declared policy of Congress in favor of arbitration of all kinds of disputes, and the fact that, according to the explanatory note of Republic Act No. 876, "to afford the public a cheap and expeditious procedure of settling not only commercial but other kinds of controversies *most of the states of the American Union have adopted statutes providing for arbitration*, and American businessmen are reported to have enthusiastically accepted the innovation because of its obvious advantages over the

ordinary court procedure", we find no plausible reason for holding that the arbitration agreement In question, simply because it refers to a future dispute, Is null and void as being against public policy. (Underlining supplied)

(c) It is contended that the decision rendered by the U. S. District Court of New York sitting as an Admiralty Court, which, ratified the award made by the arbitrators, has no binding effect on defendant corporation, nor can it be enforced in this Jurisdiction, for the reason that when said court acted on the case it did not acquire jurisdiction over said defendant. And this claim is predicated on the alleged fact that defendant was never served with notice, summons, or process relative to the submission of the award of the arbitrators to said court, invoking in support of this contention the U.S. Arbitration Act of February 13, 1925 under which the New York District Court confirmed the arbitrators' award. But we find that the law thus invoked does not sustain defendant's pretense, for the same, in case of a nonresident, does not necessarily require that service of notics of the application for confirmation be made on the adverse party himself, it being sufficient that it be made upon his attorney (July 30, 1947, c. 392, Sec. 1, 61 Stat. 669, p. 4 Exhibit E). This is precisely what was done in this case. Copy of the notice of submission of the award to the District Court of New York was served upon defendant's counsel who in due time made of record their appearance and actually appeared when the case was heard. This is clearly stated in the decision of said court (Exhibit D). It is significant that respondent's counsel never impugned the jurisdiction of the court over defendant nor did they ever plead before it that they were bereft of authority to represent defendant. Defendant cannot therefore in this instance defeat the effect of this decision by alleging want of jurisdiction, or want of notice, as provided for in Section 48, Rule 39 of our Rules of Court.

(d) While plaintiff is a foreign corporation without license to transact business in the Philippines, it does not follow that it has no capacity to bring the present action. Such license is not necessary because it is not engaged in business in the Philippines. In fact, the transaction herein involved is the first business undertaken by plaintiff in the Philippines, although on a previous occasion plaintiff's, vessel was chartered by the National Rice and corn Corporation to carry rice cargo from abroad to the Philippines. These two isolated transactions do not constitute engaging in business in the Philippines within the purview of Sections 68 and 69 of the Corporation Law so as to bar plaintiff from seeking redress in our courts. (Marshall-Wells Co. v. Henry W. Elser & Co., 46 Phil., 70; Pacific Vegetable Oil Corporation vs. Angel O. Singzon, G.R. No. L-7917, April 29, 1955.)

Wherefore, the decision appealed from is affirmed, without pronouncement as to costs.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Labrador, Concepcion, Reyes, J.B.L., Endencia and *Felix, JJ.,* concur.

Date created: August 03, 2017