

**MALAYAN INSURANCE COMPANY, PLAINTIFF-APPELLANT, VS.
SMITH, BELL & CO. (PHIL.) INC. AND/OR LUZON STEVE DORING
CORPORATION AND/OR REPUBLIC OF THE PHILIPPINES,
DEFENDANTS-APPELLEES.**

G.R. No. L-26823. November 17, 1980

Ponente: FERNANDO, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0f1467143719/>

FERNANDO, C.J.:

It is undoubted that at the time the notice of appeal was filed by the Malayan Insurance Company[1] from an order of the lower court granting a motion to dismiss a suit for the recovery of a sum of money filed by one of the defendants, the Republic of the Philippines,[2] then engaged in the activity of an arrastre operator, this Court had not as yet spoken definitively on the question of its immunity from suit by virtue of undertaking such activity. Plain tiff, now appellant, was the insurer-subrogee of imported cargoes lost while in the possession and under the care and custody of the Republic as such operator. At the time, however, that its brief was filed, namely on February 23, 1967, this Court, in the leading case of Mobil Philippines Exploration, Inc. v. Customs Arrastre Service,[3] left no doubt that the fundamental principle of state immunity from suit precluded such an action. As pointed out in the opinion of Justice Bengzon, its ponente: "The Bureau of Customs, acting as part of the machinery of the national government in the operation of the arrastre service, pursuant to express legislative mandate and as a necessary incident of its prime governmental function, is immune from suit, there being no statute to the contrary." [4] Such a ruling was thereafter consistently applied. It was so even in the absence of any constitutional provision. There was explicit reaffirmation of such a cardinal concept in the present Constitution: "The State may not be sued without its consent." [5] Accordingly, this Court, in the following decisions: *Del Mar v. The Philippine Veterans Administration*; [6] *Republic v. Villazor*; [7] *Sayson v. Singson*; [8] *Director of the Bureau of Printing v. Francisco*; [9] and *Republic v. Purisima*, [10] dismissed cases where the Republic, without any showing that it had assented to such a move, was made party-defendant. So it must be once again. The order of dismissal stands.

The facts are undisputed. To quote from the complaint, record on appeal: "On or about November 17, 1964, the SS 'Perseus' took and received on board at Liverpool, England, all in good order and without exception, a cargo consisting of two hundred forty (240) Fibre Casks Phosphate weighing 15,920 kilos imported by Philippine Refining Co., Inc. with a total invoice value of US\$ 4,119.22 C and F Manila, for which said vessel issued its Bill of Lading No. M-104; Said Cargo was insured with plaintiff against loss or damage for the amount of P17,705.00, Philippine currency. The SS 'Perseus,' having arrived at the Port of Manila, on or about December 17, 1964, discharged said cargo shipside to lighter 'L-282' of defendant Luzon Stevedoring Corporation, which in turn delivered said cargo to defendant Republic of the Philippines, as arrastre operator; the latter subsequently delivered said shipment to Luzon Brokerage Corporation for warehousing with a portion thereof in bad order and in damaged condition; said Luzon Brokerage Corporation delivered the aforesaid cargo to the consignee thereof in the same condition as when received from defendant Republic of the Philippines; Claims for the aforesaid

damages and losses were filed with all the defendants and the plaintiff in the amount of P1,394.13 which claim the latter paid in due course through E.E. Elser, Inc. as its settling agent, thereby subrogating itself to the consignee's rights of recovery; Defendants despite demand failed and refused and to the present still fail and refuse to pay consignee's claim to which plaintiff has been subrogated and of which all defendants were informed; [Appellant then pointed out it was uncertain] as to which among the alternative defendants had custody of subject shipment when the shortages and damages sustained by the same occurred, and is uncertain against which of defendants it is entitled to relief." [11] As noted earlier the motion to dismiss was filed by the Republic of the Philippines through the then Solicitor General, now Associate Justice, Antonio P. Barredo. As pointed out earlier, such a motion to dismiss was granted by the lower court. Hence this appeal.

1. The aforecited case of *Republic v. Purisima*, [12] a 1977 decision, quoted with approval this excerpt from *Switzerland General Insurance Co., Ltd. v. Republic of the Philippines*: "The doctrine of non-suability recognized in this jurisdiction even prior to the effectivity of the [1935] Constitution is a logical corollary of the positivist concept of law which, to para phrase Holmes, negates the assertion of any legal right as against the state, in itself the source of the law on which such a right may be predicated. Nor is this all. Even if such a principle does not give rise to problems, considering the vastly expanded role of government enabling it to engage in business pursuits to promote the general welfare, it is not obeisance to the analytical school of thought alone that calls for its continued applicability. Why it must continue to be so, even if the matter be viewed sociologically, was set forth in *Providence Washington Insurance Co. v. Republic* thus: 'Nonetheless, a continued adherence to the doctrine of non-suability is not to be deplored for as against the inconvenience that may be caused private parties, the loss of governmental efficiency and the obstacle to the performance of its multi farious functions are far greater if such a fundamental principle were abandoned and the availability of judicial remedy were not thus restricted. With the well-known propensity on the part of our people to go to court, at the least provocation, the loss of time and energy required to defend against law suits, in the absence of such a basic principle that constitutes such an effective obstacle, could very well be imagined.'" [13]

2. There is relevance likewise to this additional excerpt from the *Switzerland General Insurance Company* opinion likewise quoted in *Purisima*: "Nor is injustice thereby caused private parties. They could still proceed to seek collection of their money claims by pursuing the statutory remedy by having the Auditor General pass upon them subject to appeal to the Supreme Court for final adjudication. We could thus correctly conclude as we did in the cited *Providence Washington Insurance* decision: 'Thus the doctrine of non-suability of the government without its consent, as it has operated in practice, hardly lends itself to the charge that it could be the fruitful parent of injustice, considering the vast and ever-widening scope of state activities at present being undertaken. Whatever difficulties for private claimants may still exist, is, from an objective appraisal of all factors, minimal. In the balancing of interests, so unavoidable in the determination of what principles must prevail if government is to satisfy the public weal, the verdict must be, as it has been these so many years, for its continuing recognition as a fundamental postulate of constitutional law.'" [14]

WHEREFORE, this appeal from the order of the lower court is dismissed. Costs against plaintiff-appellant.

Concepcion, Jr., Abad Santos, and De Castro, JJ., concur.

Aquino, J., see concurring opinion.

Barredo, J., took no part.

[1] March 7, 1966.

[2] The other defendants were *Smith, Bell & Co. (Phil.), Inc.* and *Luzon Stevedoring Corporation*.

[3] L-23139, December 17, 1966, 18 SCRA 1120.

[4] Ibid., 1127.

[5] Article XV, Section 16 of the Constitution.

[6] L-27299, June 27, 1973, 51 SCRA 340.

[7] L-30671, November 28, 1973, 54 SCRA 83.

[8] L-30044, December 19, 1973, 54 SCRA 282.

[9] L-31337, December 20, 1973, 54 SCRA 324.

[10] L-36084, August 31, 1977, 78 SCRA 470.

[11] Complaint, Record on Appeal, 3-5.

[12] L-36084, August 31, 1977, 78 SCRA 470.

[13] Ibid., 472-473. *Switzerland Insurance Co., Ltd. v. Republic of the Philippines*, L-27389, March 30, 1970, is reported in 32 SCRA 227 and *Providence Washington Insurance Co. v. Republic*, L-26386, September 30, 1969.

[14] Ibid., 473-474.

CONCURRING OPINION

AQUINO, J.:

I concur in the learned opinion of the Chief Justice.

I just want to make the observation that the dismissal of the action against the Republic of the Philippines does not affect plaintiff's cause of action against the other two defendants which is an action in admiralty erroneously dismissed by the trial court.

The other two defendants did not bother to file appellees' briefs. They did not contest plaintiff's fourth assignment of error that the lower court erred in dismissing the case against Smith, Bell & Co. (Phil.), Inc. and Luzon Stevedoring Corporation on the ground of lack of jurisdiction. That assignment of error should be sustained.

Hence, the case against the said two defendants should be tried by the lower court.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.