

HILARION C. TOLENTINO, PLAINTIFF AND APPELLANT, VS. THE BOABD OF ACCOUNTANCY, ROBERT OR FERGUSON AND HANS HAUSAMANN, DEFENDANTS AND APPELLEES.

G. R. No. L-3062. September 28, 1951

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/752f19a84607/>

BAUTISTA ANGELO, J.:

This is an action for declaratory relief filed by plaintiff in the Court of First Instance of Manila for the purpose of testing the constitutionality of section 16-A of Commonwealth Act No. 3105, otherwise known as the Philippine Accountancy Law, as amended by Commonwealth Act No. 342. The ground advanced for the claim of unconstitutionality is that "it is a class legislation since by its very terms it excludes persons engaged in other callings or professions from adopting, acquiring or using a trade name in connection with the practice of such callings or professions."

The action is addressed against the Board of Accountancy, Robert Orr Ferguson, and Hans Hausamann and notice thereof has been served on the Solicitor General under section 4 of Rule 66 of the Rules of Court; but the Board of Accountancy did not answer the complaint, nor has the Solicitor General intervened. Only Ferguson and Hausamann appeared and answered through counsel. Attorney Claro It. Recto was allowed to intervene as amicus curiae. The case was submitted for judgment on the pleadings. After the parties had submitted their memoranda, the court dismissed the complaint holding that the disputed law does not offend against the constitution. From that decision the plaintiff appealed to this Court.

As the facts are not disputed, and the case was submitted on the pleadings, we are quoting hereunder the facts as found by the lower court in its decision.

"The complaint alleges that the plaintiff is a Filipino citizen and a certified public accountant duly admitted to the practice of accountancy as per certificate No. 1224 issued on March 16, 1948; that the Board of Accountancy is an administrative body created by law and vested with the power and authority to regulate and supervise the practice of the profession of accountancy in the Philippines, and that the defendants Robert Orr Ferguson and Hans Hausamann are foreigners, the former being a British subject and the latter a Swiss subject, both admitted to the practice of accountancy in the Philippines, that said two defendants have been and are practicing their profession as certified public accountants under the trade name 'Fleming & Williamson'; and that Section 16-A of Act No. 3105 as amended by Commonwealth Act No. 342, authorizing accountants to practice their profession under a trade name, is unconstitutional on the ground that it excludes persons engaged in other 'Callings and professions from adopting or acquiring or using a trade name.

"In their answer the defendants Robert Orr Ferguson and Hans Hausamann practically admitted the foregoing allegations of the complaint. Said defendants allege that Commonwealth Act No. 842 amending Act No. 3105, authorizing the use of a trade name in the practice of the profession of accountancy is not a class legislation, nor does it violate the provision of the Constitution with respect to equal protection of the laws; that the plaintiff has no right or interest adversely affected by said law and that he is entitled to the benefits thereof and

may use a trade or firm name in the practice of his profession as accountant.

"Upon leave of court Atty. Claro M. Recto appeared as amicus curiae supporting the validity or constitutionality of the provision of law questioned by the plaintiff.

"The parties are agreed as to the material facts alleged in the pleadings. They are also agreed that the firm name 'Fleming & Williamson' is an old trade name of accountants which was used originally in 1925 by Messrs. D. M. Fleming and J. Williamson. The right to use this firm name was sold to various parties until in the end it was acquired by the defendants Robert Orr Ferguson and Hans Hausamann in 1946. On June 10, 1946, defendants Robert Orr Ferguson and Hans Hausamann formed a copartnership styled 'Ferguson & Hausamann' doing business under the trade name 'Fleming & Williamson'. The articles of copai'tnership were presented for registration in the Securities and Exchange Commission on the same date. On June 13, 1956, this trade name 'Fleming & Williamson' was registered in the Bureau of Commerce in accordance with Act No. 3883, as amended by Act No. 4147, as the firm name of the partnership 'Ferguson & Hausamann,' under which the said defendants would practice their profession as certified public accountants in the Philippines.

"On September 17, 1948, the partnership of 'Ferguson & Hausamann' applied for the renewal of the registration of 'Fleming & Williamson' as their trade name in accordance with the provisions of Act No. 3883, as amended by Act No. 4147, and on the same date said trade name or business name was so registered.

"The defendant Board of Accountancy did not appear or answer notwithstanding service of summons upon it and upon the Solicitor General. By agreement of the parties, the case was submitted for decision upon the pleadings presented and the memoranda filed by the parties."

We believe that the issues involved in the present case may be boiled down as follows: (1) whether or not the plaintiff, has sufficient cause of action to question the constitutionality of Commonwealth Act No. 342; and (2) whether or not said Act is constitutional

- Plaintiff brought this action for the purpose of testing, the constitutionality of Commonwealth Act No. 342 because, according to the complaint, it constitutes class legislation for "by its very term it excludes persons engaged in other callings or professions from adopting, acquiring or using a trade name in connection with such calling or profession." His main objection centers on the exclusive character of the law which extends its benefits only to those engaged in the profession of accountancy. It is obvious that he seeks the declaratory relief not for his own personal benefit, or "because his rights or prerogatives as an accountant, or as an individual, are adversely affected, but rather for the benefit of persons belonging to other professions or callings, who are not parties to this case. He does not claim having suffered any prejudice or damage to him or to his rights or prerogatives as an accountant by the use of the disputed name by the defendants. His complaint is rather addressed against the propriety of the use of said trade name by the defendants because it is misleading and is liable to defraud the public. Plaintiff, therefore, has no actual justiciable controversy against the herein defendants which may give him the right to secure relief by asserting the unconstitutionality of the law in question. This case, therefore, does not properly come under rule 66 of the Rules of Court which authorizes the institution of an action for declaratory relief.

The authorities are unanimous that in order that an action for declaratory relief may be entertained, it must be predicated on the following requisite facts or conditions: (1) there must be a justiciable controversy; (2) the controversy must be between persons whose interests are adverse; (3) the party seeking declaratory relief must have a legal interest in the controversy; and (4) the issue involved must be ripe for judicial determination. These requisite facts are wanting and, therefore, the complaint must fail for lack of sufficient cause of action.

"Justiciability; its requisites.—Except that accomplished physical wrong need not be alleged in a petition for declaratory relief, a case of such nature must exhibit all the usual conditions of an ordinary action. There must

he (1) .real parties in interest (2) asserting adverse claims and (3) presenting a ripe issue. The Supreme Court of Pennsylvania summarized its exhaustive opinion on the requisites of justiciability of an action for declaratory relief by saying that the court must be 'satisfied that an actual controversy, or the ripening seeds of one, exists between parties, all of whom are sui juris and before the court, and that the declaration sought will be a practical help in ending the controversy.' Justice Brandeis thought that 'the fact that the plaintiff's desires are thwarted by its own doubts, or by the fears of others * * * does not confer a cause of action.' But the doubt becomes a justiciable controversy when it is translated into a claim of right which is actually contested." (Moran's Com. on the Rules of Court, vol. II, pp. 131-132, 3rd. Ed.)

Granting for the sake of argument that plaintiff has established the requisite facts to entitle him to claim for declaratory relief, we are, however, of the opinion that Commonwealth Act No. 342 does not offend against the equal protection clause of our Constitution on the ground of class legislation, for the reason that said Act applies alike to all persons pursuing the same calling or profession under the same conditions or requirements. Said Act gives the same right or affords the same privileges to all accountants without distinction or discrimination. This benefit is extended to the defendants as well as to the plaintiff. The only requirement is. that they should comply with the provisions of Act No. 3883 as to the procedure to be followed relative to the use of the chosen trade name. So long as the law applies to all alike, the requirements of equal protection are met. (Louisiana ex rel. Francis vs. Reswober, 329 U. S. 559). The discriminations which are open to objections are those in which persons engaged in the same business are subjected to different restrictions or are held entitled to different privileges under the same conditions. (Soon Hing vs. Crowley, 113 U. S., 703). The authorities on this point are numerous but for our purpose it is sufficient to quote some which are deemed representative.

"It is a general rule that legislation which affects alike all persons pursuing the same business under the same conditions is not such, class legislation as is prohibited by constitutional provisions, The discriminations -which are open to objection are those in which persons engaged in the same business are subjected to different restrictions or are held entitled to different privileges under the same conditions. Part of the liberty of a citizen consists in the enjoyment, upon terms of equality with all others in similar circumstances, of the privilege of pursuing an ordinary calling or trade and of acquiring, holding, and selling property. The constitutional guaranty as to the equal protection of the laws, moreover, requires that no impediment should be interposed to the pursuits of anyone except as applied to the same pursuits by others under similar circumstances and that no greater burdens are engaged in a calling should be laid upon one than are laid upon others in the same calling and condition." (12 Am. Jur., 187.)

"The general rule is well settled that legislation which, in carrying out a public purpose, is limited in its application, if within the sphere of its operation it affects all persons similarly situated, is .not within the prohibition of the 14th Amendment. The mere fact that legislation is based on a classification and is made to apply only to a certain limited group of persons, and not to others, does not affect its validity, if it is so made that all persons subject to its terms are treated alike under similar circumstances and conditions." (12 Am. J.ur., 143.)

"The legislature may classify professions, occupations, and business, according to natural and reasonable lines of distinction, and if a statute affects alike all persons of the same class it is not invalid as class legislation; * * *" (16 C. J. S., 966.)

"Classification of businesses, occupations, and callings may be made according to natural, reasonable, and well-recognized lines of distinction, and the mere fact that a statute or ordinance applies only to a particular position or profession, or to a particular trade occupation, or business, or discriminates between persons in different classes of occupations or lines of business, does not render it unconstitutional as class legislation, and such statutes are valid whenever the partial application or discrimination is based on real and reasonable distinctions existing in the subject matter, and affects alike all persons of the same class or pursuing the same business under the same conditions; * * *" (16 C. J. S., 967.)

It is not true that Commonwealth Act No. 342 precludes practitioners of other professions, occupations or calling from using a trade name in connection with the practice of their professions, occupation or calling. While said Act does not mention other professions, occupations or calling, it does not mean that they are precluded from using a trade name as this privilege is likewise given to them in other similar laws. We may mention Commonwealth Act No. 294 for mechanical engineers, Republic Act No. 318 for chemical engineers, and even the corporation law as regards corporate names (Tolentino's Commentaries on Commercial laws, Vol. II, p. 753).

Assuming that Commonwealth Act No. 342 grants to accountants a privilege not accorded to members of other professions or callings, that alone would not render the Act discriminatory or violative of the equal protection clause of the constitution, for that clause only means "that no person or class of persons shall be denied the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances". (Missouri vs. Lewis, 101 U. S. 22, 81.) And the "Legislature may classify professions, occupations, and business according to natural and reasonable lines of distinction, and if a statute affects alike all persons of the same class it is not invalid as a class legislation." (16 C. J. S., 966).

The claim that Commonwealth Act No. 342 is discriminatory because it was approved only to protect foreign accountants has no basis in law or in fact, for there is nothing that bears it out. Said Act applies to all accountants¹ in general without distinction.

The claim that said Act contravenes the principle of separation of powers is likewise untenable. The Act does not encroach upon the powers of the Executive Department as represented by the Board of Accountancy simply because it attempts to regulate the profession of accountants. If our legislature can create the Board of Accountancy, it can certainly amend the law that gave life to it without in any way encroaching on the prerogatives of the Executive Department of our government.

Wherefore, the decision appealed from is affirmed with costs against the appellants.

Paras, C. J., Pablo, Bengzon, Padilla, Tuason and Jugo, JJ., concur.

Feria and Reyes JJ., concur in the result.

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.