

**MARSHALL-WELLS COMPANY, PLAINTIFF AND APPELLANT, VS.
HENRY W. ELSE & CO., INC., DEFENDANT AND APPELLEE.***G.R. No. L-22015. September 01, 1924*

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/adc08a908a87/>**MALCOLM, J.:**

Marshall-Wells Company, an Oregon corporation, sued Henry W. Elser & Co., Inc., a domestic corporation, in the Court of First Instance of Manila, for the unpaid balance on a bill of goods amounting to P2,660.74, sold by plaintiff to defendant and for which plaintiff holds accepted drafts. Defendant demurred to the complaint on the statutory ground that the plaintiff has not legal capacity to sue. In the demurrer, counsel stated that "The said complaint does not show that the plaintiff has complied with the laws of the Philippine Islands in that which is required of foreign corporations desiring to do business in the Philippine Islands, neither does it show that it was authorized to do business in the Philippine Islands." The demurrer was sustained by the trial judge. Inasmuch as the plaintiff could not allege compliance with the statute, the order was allowed to become final and an appeal was perfected.

To begin with the law as a fit setting for the issue. The Corporation Law (Act No. 1459) contains six sections relating particularly to foreign corporations. Section 68, as amended by Act No. 2900, provides that no foreign corporation "shall be permitted to transact business in the Philippine Islands until after it shall have obtained a license for that purpose from the Chief of the Mercantile Register of the Bureau of Commerce and Industry," upon order either of the Secretary of Finance or the Secretary of Commerce and Communications. No order for a license shall be issued except upon a statement under oath of the managing agent of the corporation, showing to the satisfaction of the proper Secretary that the corporation is solvent and in sound financial condition, and setting forth the resources and liabilities of the corporation. Said statement shall contain the following: (1) The name of the corporation; (2) the purpose for which it was organized; (3) the location of its principal or home office; (4) the capital stock of the corporation and the amount thereof actually subscribed and paid into the treasury; (5) the net assets of the corporation over and above all debts, liabilities, obligations, and claims outstanding against it; and (6) the name of an agent residing in the Philippine Islands authorized by the corporation to accept service of summons and process in all legal proceedings against the corporation and of all notices affecting the corporation. Further evidence of the solvency and fair dealing of the corporation may be required. Upon filing in the Mercantile Register of the Bureau of Commerce and Industry the said statement, a certified copy of its charter, and the order of the Secretary for the issuance of a license, the Chief of the Mercantile Register "shall issue to the foreign corporation as directed in the order a license to do business in the Philippine Islands," and for the issuance of the license shall collect a fee fixed in accordance with the schedule established in section 8 of the Law.

Passing section 69 of the Corporation Law for the moment, section 70, as amended, covers the cases of foreign corporations "transacting business in the Islands at the time of the passage" of the Act. Section 71 authorizes the Secretary of Finance or the Secretary of Commerce and Communications, as the case may be, by and with the approval of the Governor-General, "to revoke the license to transact business in the Philippine Islands" of any

foreign corporation. Section 72 concerns summons and legal process. Section 73 makes a foreign corporation bound by all the laws, rules, and regulations applicable to domestic corporations of the same class, with certain exceptions.

Returning now to section 69 of the Corporation Law, its literal terminology is as follows:

"No foreign corporation or corporation formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding. Any officer, director, or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than six months nor more than two years or by a fine of not less than two hundred pesos nor more than one thousand pesos, or by both such imprisonment and fine, in the discretion of the court."

Is the obtaining of the license prescribed in section 68, as amended, of the Corporation Law a condition precedent to the maintaining of any kind of action in the courts of the Philippine Islands by a foreign corporation? The issue is framed to correspond with defendant's theory of the case on appeal, although possibly somewhat at variance with its stand in the lower court.

So far as we are informed, this is a question of first impression. The case of *Dampfschieffs Rhederei Union vs. Compania Trasatlantica* ([1907], 8 Phil., 766), relating to the provisions of the Code of Commerce, only held that a foreign corporation which has not established itself in the Philippines, nor engaged in business in the Philippines, could, without filing its articles of incorporation in the mercantile registry, maintain an action against another for damages. The case of *Spreckels vs. Ward* ([1909], 12 Phil., 414), while making reference to a point similar to the one before us, was merely authority for the holding, that the provisions of section 69 of the Corporation Law denying to unregistered foreign corporations the right to maintain suits for the recovery of any debt, claim, or demand, do not impose on all plaintiff-litigants the burden of establishing by affirmative proof that they are not unregistered foreign corporations; that fact will not be presumed without some evidence tending to establish its existence. But the question is not alone new, but of prime importance, to the consideration of which we have given mature thought.

Corporations have no legal status beyond the bounds of the sovereignty by which they are created. A state may restrict the right of a foreign corporation to engage in business within its limits, and to sue in its courts. But by virtue of state comity, a corporation created by the laws of one state is usually allowed to transact business in other states and to sue in the courts of the forum. (*Paul vs. Virginia* [1869], 8 Wall., 168; *Sioux Remedy Co. vs. Cope and Cope* [1914], 235 U. S., 197; *Cyclone Mining Co. vs. Baker Light & Power Co.* [1908], 165 Fed., 996.)

But here we have present for resolution no question of constitutional law. Article 4 of the United States Constitution and the Fourteenth Amendment to the Constitution are not invoked. The issue is not complicated with matters affecting interstate commerce under the American Constitution. Nor are we concerned with a question of private international law. It all simmers down to an issue of statutory construction.

Defendant isolates a portion of one sentence of section 69 of the Corporation Law and asks the court to give it a literal meaning. Counsel would have the law read thus: "No foreign corporation shall be permitted to maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in section 68 of the law." Plaintiff, on the contrary, desires for the court to consider the particular point under discussion with reference to all the law, and thereafter to give the law a common sense interpretation.

The object of the statute was to subject the foreign corporation doing business in the Philippines to the jurisdiction

of its courts. The object of the statute was not to prevent the foreign corporation from performing single acts, but to prevent it from, acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suit in the local courts. The implication of the law is that it was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine courts, and thus, in effect, to permit persons to avoid their contracts made with such foreign corporations. The effect of the statute preventing foreign corporations from doing business and from bringing actions in the local courts, except on compliance with elaborate requirements, must not be unduly extended or improperly applied. It should not be construed to extend beyond the plain meaning of its terms, considered in connection with its object, and in connection with the spirit of the entire law. (State vs. American Book Co. [1904], 69 Kan., 1; American De Forest Wireless Telegraph Co. vs. Superior Court of City & County of San Francisco and Hebbard [1908], 153 Cal., 533; 5 Thompson on Corporations, 2d ed., chap. 184.)

Confronted with the option of giving to the Corporation Law a harsh interpretation, which would disastrously embarrass trade, or of giving to the law a reasonable interpretation, which would markedly help in the development of trade; confronted with the option of barring from the courts foreign litigants with good causes of action or of assuming jurisdiction of their cases; confronted with the option of construing the law to mean that any corporation in the United States, which might want to sell to a person in the Philippines must send some representative to the Islands before the sale, and go through the complicated formulae provided by the Corporation Law with regard to the obtaining of the license, before the sale was made, in order to avoid being swindled by Philippine citizens, or of construing the law to mean that no foreign corporation doing business in the Philippines can maintain any suit until it shall possess the necessary license,— confronted with these options, can anyone doubt what our decision will be? The law simply means that no foreign corporation shall be permitted "to transact business in the Philippine Islands," as this phrase is known in corporation law, unless it shall have the license required by law, and, until it complies with the law, shall not be permitted to maintain any suit in the local courts. A contrary holding would bring the law to the verge of unconstitutionality, a result which should be and can be easily avoided. (Sioux Remedy Co. vs. Cope and Cope, *supra*; Perkins, Philippine Business Law, p. 264.)

The noncompliance of a foreign corporation with the statute may be pleaded as an affirmative defense. Thereafter, it must appear from the evidence, first, that the plaintiff is a foreign corporation, second, that it is doing business in the Philippines, and third, that it has not obtained the proper license as provided by the statute. (Standard Stock Food Co. vs. Jasper [1907], 76 Kan., 926; Spreckels vs. Ward, *supra*.)

The order appealed from shall be set aside and the record shall be returned to the court of origin for further proceedings. Without special finding as to costs in this instance, it is so ordered.

Johnson, Street, Avancena, Villamor, Ostrand, and Romualdez, JJ., concur.

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.