

**FIREMAN'S FUND INSURANCE COMPANY,
PLAINTIFF-APPELLANT, VS. UNITED STATES LINES COMPANY
AND/OR REPUBLIC OF THE PHILIPPINES, DEFENDANTS-APPELLEES.**

G.R. No. L-26533. January 30, 1970

Ponente: FERNANDO, J.

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FERNANDO, J.:

The outcome of this appeal by Fireman's Fund Insurance Company from an order of the lower court of July 8, 1966 dismissing its complaint against the Republic of the Philippines on the ground of lack of jurisdiction, as the State cannot be sued without its consent, cannot be in doubt. It was noted in *Providence Washington Insurance Company v. Republic*[1] that ever since December 17, 1966 when *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service*[2] was promulgated, it has been our constant holding that the doctrine of governmental immunity from suit unless it is agreeable to the filing thereof, is a bar against litigations of this character, the thirty-six subsequent cases decided in line with the above principle being cited. Since then, three other decisions of the same character have been added.[3]

Appellant Fireman's Fund Insurance Company is thus devoid of any right to maintain this suit to hold the Republic liable for losses and damages resulting from a shipment destined for the port of Manila with the General Electric Philippines, Inc. as consignee and insured with it, it being alleged further that on the discharge of the shipment under the custody of the Republic, as arrastre operator, it was found upon delivery to the consignee that losses and damages in the amount of P6,793.39 were incurred. After paying the same, appellant, as subrogee would, in addition to the other defendant United States Lines Company, likewise hold the Republic liable. A motion to dismiss was filed by the Republic on the ground of nonsuability, which motion, as noted, was upheld in the order of July 8, 1966, now on appeal.

Its futility, as made, clear at the outset, is rather obvious. We are not disposed to depart from such a ruling uninterruptedly and steadfastly adhered to. It is not only out of deference, to quote from Holmes, to "any formal conception or, absolute theory," but because of "the logical and practical ground that there can be no legal right as against the authority that makes the law on which the right depends." [4] We are not unmindful that the expanded role of government to meet the needs of public welfare, at times calling for its undertaking business activities, could result in an inconvenience to those with whom it deals by virtue of the primacy accorded to the above doctrine. Nevertheless, the better policy has been to yield to its command and thus free the Republic from the vexations consequent upon its being made a defendant in such cases, the effect of which would undeniably be to lessen governmental efficiency in view of the time and attention that would thus be diverted. In dismissing the case, therefore, the lower court acted precisely as it ought to. Its action is free from legal infirmity.

WHEREFORE, the order of dismissal of the lower court of July 8, 1966 is affirmed. With costs against plaintiff-appellant.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, and Teehankee, JJ., concur.

Barredo and Villamor, JJ., did not take part.

[1] 29 SCRA 598, L-26386 (September 30, 1969).

[2] 18 SCRA 1120, L-23139.

[3] The Phoenix Assurance Company v. Republic, L-26531, October 31, 1969. Also, The Hanover Insurance Co. v. United States Lines, L-26919, November 25, 1969; Providence Washington Insurance Co. v. Republic, L-26978, November 28, 1969.

[4] Kawanakoa v. Polyblank, 205 US 349 (1907).

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