

T. R. YANGCO, PETITIONER, VS. THE BORAD OF PUBLIC UTILITY COMMISSIONERS, RESPONDENT.

G.R. No. 11203. January 23, 1917

Ponente: MORELAND, J.

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MORELAND, J.:

On the 3d day of July, 1915, A. H. Sjovall, district engineer of Capiz, sent the following communication to the Board of Public Utility Commissioners:

"Gentlemen: I have the honor to enter complaint against the owners of the S. S. L. R. Yangco on the grounds of (1) failure to follow out sailing schedule as specifically advertised and (2) failure to duly notify the public at the port of Capiz of the change in routing.

"Specifications follow. On June 22, 1915, the master of the steamship L. R. Yangco advised Mr. Jose Lara, post-master, Capiz, by wire from Manila that his steamer would arrive in Capiz at 8 o'clock a. m. on Friday (June 25) and that she would sail for New Washington at 8 o'clock p. m. of the same day. This information came in accordance with the established practice of the master of the vessel in question. Advices so furnished are primarily for the purpose of enabling the local post office to dispatch mail on the steamer. Out of courtesy and for the convenience of the public and local Government officials Mr. Lara posts these advices on the bulletin board in the provincial government building. The telegram in question was posted in like manner on the day received, and was noted by this office.

"The undersigned and Mr. D. E. Henry, senior supervising engineer, Bureau of Public Works, desired to go to New Washington. Upon the publication of the advice from the master of the vessel that she would sail for New Washington on the evening of the 25th we made our plans to sail on the steamship L. R. Yangco.

"Upon arrival of the steamer at Capiz it was announced that she had just arrived from New Washington and would sail the same evening for Manila via Romblon and would not touch at New Washington. In the meantime no further advices had been received in Capiz concerning the change in routing in spite of the fact that the steamer had touched at no less than two ports from which notice could have been telegraphed to Capiz, namely Romblon and New Washington.

"The undersigned and Mr. Henry were then obliged to hire a launch to make the trip to New Washington at a cost of P30. Regular commercial transportation would have cost but P4.20.

"Had the advertised schedule been followed we would have sailed on the steamship L. R. Yangco, Had no information been received we would have sailed on the launch early in the morning of June 24, thus avoiding a delay of more than one and one-half days.

"I enclose for your information a certified copy of the telegram received by Mr. Lara from master of the steamship L. R. Yangco on June 22.

"The undersigned requests that the owner and master of the steamship L. R. Yangco be restrained from giving out unreliable information which deceives the public and causes undue annoyance, expense and delay."

The telegram referred to is as follows:

"Jose Lara, Capiz.

"L. R. Yangco would arrive there Friday eight morning would sail same day eight night for New Washington.

"Blanco."

Upon receipt of this communication the Board served the following notice and order upon the respondent company:

"You are hereby required to answer the complaint of the complainant herein, copy of which is hereto attached and herewith served upon you, within 10 days from the date of this order."

In response to this notice and order the respondent company answered admitting the sending of the telegram above set out but alleging "that this notice was given merely as a matter of accommodation to the post-office authorities and was not intended to be used as a notice to the public."

The answer then alleges that "the Government of the Philippine Islands, does not pay respondent anything for the carriage of the mails and that this service is rendered voluntarily, as a matter of mere accommodation to the people of the places in which respondent's steamers touch;" and further alleges, "that respondent does not undertake to maintain any fixed schedule of arrivals and departures for the steamer Luis R. Yangco."

Respondent also sets out by way of defense "that upon the arrival of the steamship Luis R. Yangco at Capiz on June 25 last, at shortly after 9 a. m., the captain of the vessel decided that it would be more advantageous for commercial reasons, to give up the proposed trip to New Washington, and return to Manila by way of Boac and Romblon and thereupon about 9.30 a. m. on the same day, so advised the postmaster of Capiz by telephoning to him to that effect from the Lipas dock."

The last paragraph of the answer is as follows:

"That respondent regrets that the change in the itinerary of the steamer Luis R. Yangco on the occasion in question has caused inconvenience to the complainant, and to avoid such misunderstanding in the future all local notices relating to the sailing of the said vessel will be made subject to the proviso that the right is reserved to abandon such projected voyages without notice, this notification to the public having been continuously given for sometime past in the published advertisements in the daily press of Manila."

Upon the hearing of the case no evidence was presented by the complainant or by the Government or the Board of Public Utility Commissioners. The facts set out in the complaint were admitted. The respondent offered Evaristo Francisco, one of its managers, as a witness, who testified in substance that the published schedule of the respondent expressly reserved the right to change the route therein set; out without previous notice to the public; that it had no contract with shippers either in Capiz or New Washington and none with the Government about carrying the mails; that the telegram was sent as an accommodation to the public and not as a duty which it owed under its published notices and schedule.

On examination by a member of the Board the witness testified in effect that up to the time of the complaint the usual rout of the vessel was from Manila to Boac, Romblon, from Romblon to Capiz sometimes, and sometimes to New Washington.; that notice of the arrival and departure of vessels at and from Capiz and New Washington was given when the captain deemed advisable; that respondent had no agent at Capiz but it telegraphed the

postmaster to notify all interested as to the arrival and departure of the ship; that the vessel always goes to New Washington but not always direct, sometimes going to Capiz first and from there to New Washington. The witness was asked by a member of the Board if he had any plan by which "the difficulties indicated in this complaint can be avoided," and by which he "could accommodate the business of the vessel to the necessities of the public," To this witness replied that the occurrences such as were set out in the complaint were infrequent, and that he, "had no suggestion to make." This was the only witness sworn and this testimony is the only testimony in the case except the written report of the captain of the ship which refers exclusively to the occurrence complained of.

Upon the pleading and evidence the Board made the following order:

"We therefore order the defendant to establish a fixed schedule of arrivals and departures for the steamer Luis R. Yangco between the ports of Manila, Boac, Romblon, Capiz, and New Washington, to maintain such schedule unless prevented by weather or other insuperable obstacles, to publish the same so that the terms thereof may be known generally to the public served by him and to file a copy thereof with this Board."

This order is before us under an appeal taken under section 37 of Act No. 2307.

Many questions are raised and discussed. We find it unnecessary to consider more than one. Courts will generally refrain from deciding the question of the constitutionality of an Act of the Legislature unless it is absolutely necessary to a final determination of the case presented. Such a determination is not required here. We limit ourselves, therefore, to a decision of the question presented by the contention that there is not only absolutely nothing in the record to support the order of the Board but also that such order is wholly outside the issues raised by the pleadings, is contrary to the theory on which the proceeding was heard and tried, and is a complete surprise to the appellant who had no notice that the subject-matter of the order was before the Board for consideration and was, therefore, deprived of an opportunity to be heard with respect thereto.

We are of the opinion that the appellant's contention is sound from every aspect. We have quoted or set out the pleadings substantially in full in order that the issues framed thereby may be clear. The complaint is based exclusively on a particular and single occurrence, namely, that the respondent gave a notice to the public, by means of a telegram, that its vessel would be at Capiz on a certain day and hour and would, on a certain day and hour, leave Capiz for New Washington; and that respondent failed completely to comply with that notice, but, instead, acted contrary thereto, the ship going from New Washington to Capiz instead of from Capiz to New Washington as stated in the notice. There was no suggestion in the complaint that respondent was not, in general, serving the public properly and efficiently, that its itinerary as published and adhered to was not the best under all the circumstances both for the respondent and the public, or that shippers and passengers suffered by reason of the schedule maintained as compared with some other; and especially was there no suggestion or hint in the complaint that the respondent should establish a fixed schedule, or even a schedule of any kind with regard to any port or ports. Complainant does not profess to have any knowledge on those subjects and does not deal with them in any way in his complaint. His only allegation is that respondent did not live up to or comply with a particular notice with respect to a particular call at Capiz, and that he was injured by that particular failure. That this is so is, to our mind, shown conclusively, not only by the facts stated in the complaint, but also by the prayer thereof. He prays: "The undersigned requests that the owner and master of the steamship L. R. Yangco be restrained from giving out unreliable information which deceives the public and causes undue annoyance, expense and delay." There is no thought here of fixed schedules, or schedules of any kind, of particular port or ports in general. The simple cry is that, when the respondent gives a special notice to the public that it will do a certain thing at a certain time, it should not be permitted to ignore that special notice and do something entirely different from that advertised thereby. He asks for restraint and not for affirmative action; for protection against unreliable notice and

not the fixing of a given schedule. He asks not for the protection of shippers or passengers by a change in schedule or by compelling respondent to run its ship according to a particular schedule. Nothing of that sort. The complaint is specific, not general. A complaint that a street car on a particular trip refused to stop at a designated place and take on a particular person cannot be construed into a petition that the street car company change its schedule or put on new cars or alter its manner of doing business in general, or into an allegation against the efficiency of the service rendered to the public as a whole.

Moreover, the complaint in this proceeding is not that the respondent did not perform its duties in general as a common carrier to the satisfaction of the public, or that it failed in any of those duties which a common carrier owes to the public. The only specification is that the respondent failed in a special duty created by a special notice, contained in the telegram, referred to in the complaint herein. The complainant contends that the sending of that telegram created a special duty on the part of the respondent, namely, that of complying with it; and that is the duty which the complainant claims the respondent violated when, instead of complying with the notice, it ignored it. The complaint, then, was not aimed at the relation of the common carrier to the public in general. It did not refer to or touch that relation. It did not declare that the respondent had violated any duty springing from that relation. It did not call in question its schedule, or the manner in which it was followed, nor did it charge that the operations of the respondent in general did not meet the demands of the public fully. It was aimed at a special incident; at a refusal to perform a special duty; a failure to meet a particular engagement made on that particular occasion by virtue of the notice contained in the telegram. In other words, the complaint by its silence concedes that the respondent was doing its duty to the public in general; and simply alleges that it failed to live up to a special engagement made for it on a special occasion. To put it in another way, the complaint asserts and charges that the respondent, in the performance of its duty, failed in one small particular on one single occasion. It was not meant to charge thereby that the performance of the duties in general was bad, or that the public was badly served in general, or that it ought to make a new schedule or maintain a fixed schedule. A complaint made to a tailor that a coat made by him for a customer lacks a button would not support a charge that the material of the coat was not as ordered, or that the cut of the coat was not as requested, or that the tailor should make a new coat. What complainant presents is simply a failure on the part of the respondent in a very small and minor particular which occurred while engaged in the performance of its duties and the discharge of its obligations, to which performance and discharge in general no objection was made.

The complaint filed was answered by the respondent. The answer adhered strictly to the allegations of the complaint and presented only such facts as it was thought tended to show that the respondent had a right to ignore the notice referred to in the complaint, or, if it did not have that right, its failure to comply therewith was excusable under all the circumstances. It fairly joined issue with the allegations of the complaint and assisted in presenting to the Board the very question which the complainant intended to present.

The evidence offered by the respondent, as we have already seen, was directed to the issue framed by the pleadings and to no other; and it may be safely said that there is nothing in the evidence which would warrant us in holding that the issues framed by the pleading were enlarged by consent of parties on the trial.

We are of the opinion, therefore, that the order of the Board of Public Utility Commissioners was outside of the issues framed by the pleadings before it, outside of the question presented for determination, and deals with a subject-matter foreign to that contemplated by the parties. Such being the case it cannot be sustained.

By this statement it is not meant to hold that the Board itself cannot present complaints and tender issues against public utilities which, when accepted, may form the basis for an investigation within the limits stated therein. Nor is it meant to hold that there must always be a complainant apart from the Board itself. What is held is that, in any case, whether begun by the Board or by a particular individual, the public utility proceeded against is entitled to

know the facts upon which the complaint is based and the nature and extent of the relief demanded. It is necessary that the utility be given a proper and fair opportunity to defend itself. To do this it is necessary that issues be framed in some manner or other. It is not proposed to apply rigidly to proceedings before the Board of Public Utility Commissioners the rules of pleading and practice which in general govern proceedings in court; but it is the evident purpose of the law, as it is a requirement of the principles which govern due process of law, that a public utility should be duly and fully notified of the act or omission of which it is charged; and that that charge and that alone shall be the subject-matter of the investigation as well as of the order made in consequence thereof. It is not due process of law to charge a public utility with one act or omission and convict it of another; nor it is due process of law to investigate a particular subject in a given proceeding and then make an order which relates to an entirely different subject.

We find the respondent's contention with regard to the failure of evidence to support the order of the Board to be sustainable also. No officer or board can issue an order affecting the property or rights of an individual or a corporation without evidence to sustain it. When we thus speak of evidence we mean evidence which was taken by the Board and appears in the record of the proceedings of the Board. It cannot be something in the mind of one member of the Board or of all the members. It cannot consist in something which one member knows or all of the members know unless it is a matter of which they can take judicial notice. It must be evidence which was presented during the proceeding in such manner as to permit a respondent to meet it by evidence of its own. That the statute (Act No. 2307) intended that the orders of the Board of Public Utility Commissioners should be founded on legal evidence which appears in the record is clear from that provision of section 37 which provides:

"The Supreme Court is hereby given jurisdiction to review said order of the Board, and to set aside such order when it clearly appears that there was no evidence before the Board to support reasonably such order, or that the same was without the jurisdiction of the Board. The evidence presented to the Board, together with the finding of the Board and any order issued thereon, shall be certified by the Board to the Supreme Court."

If the Board may make an order without any evidence in the record to support it, then the provision that the Supreme Court may review the evidence on which the order is based is without significance. If there is no evidence, the Supreme Court cannot review it; and the power thus conferred upon it by the statute is without value or effect. If the Board may draw its information from sources not shown by the record and base its conclusions upon facts not proved and which do not appear in the record, then the provision authorizing the Supreme Court to review the evidence is meaningless." Not only is the respondent entitled to have in the record all of the facts which moved the Board to a conclusion to the end that it may know what it has to meet, but the people of the Philippine Islands are also entitled to have it there in order that the statute authorizing the Supreme Court to review it may be complied with.

An order, or judgment, or decree without evidence to support it is a nullity when properly attacked. (*Edwards vs. McCoy*, 22 Phil. Rep., 598.) It is an act against which the party adversely affected thereby has had no opportunity to defend himself and it therefore deprives him of his liberty or property without due process of law.

There is no evidence in this case that the public interests require the order complained of. There is no evidence that the public interest demands a fixed schedule. There is no evidence that the public would be better served by a fixed schedule than by the present schedule; in fact the evidence that the respondent has not now a fixed schedule is of the meagerest character; and there is absolutely no evidence that the public is suffering because the schedule is not fixed. Whatever evidence there is on that subject, and there is almost none in the record, shows that the respondent meets the demands of the shippers by going to the places where cargo may be had.

The order of the Board of Public Utility Commissioners appealed to this court is hereby vacated, set aside and

annulled. Costs de officio. So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

CARSON, J., with whom Trent, J., concurs, dissenting:

I dissent.

Act No. 2307, which created the Board of Public Utility Commissioners, as amended by section 10 of Act No. 2362, expressly defines the term "public utility" as used therein to include every individual, corporation and so forth that now or hereafter may own, operate, manage, or control within the Philippine Islands any common carrier, railroad, street railway, traction railway, steamboat or steamship company.

Section 15 (a) of the Act provides that:

"The Board shall have power:

"(a) To investigate, upon its own initiative, or upon complaint in writing, any matter concerning any public utility as herein defined."

Section 16 (b) is as follows:

"The Board shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein defined:

"(b) To furnish safe, adequate, and proper service and to keep and maintain its property and equipment in such condition as to enable it to do so."

Section 17 (c) is as follows:

"No public utility as herein defined shall:

"(c) Adopt, maintain, or enforce any regulation, practice, or measurement which shall be unjust, unreasonable, unduly preferential, arbitrarily or unjustly discriminatory, or otherwise in violation of law; nor shall any public utility as herein defined provide or maintain any service that is unsafe, improper, or inadequate, or withhold or refuse any service which can reasonably be demanded and furnished when ordered by said Board."

Proceeding under and by virtue of the power thus conferred upon the Board, the following order was made and published in the course of the proceedings now before us for review:

"We therefore order the defendant to establish a fixed schedule of arrivals and departures for the steamer Luis R. Yangco between the ports of Manila, Boac, Romblon, Capiz, and New Washington, to maintain such schedule unless prevented by weather or other insuperable obstacles, to publish the same so that the terms thereof may be known generally to the public served by him and to file a copy thereof with this Board."

Upon receiving notice of the entry of this order the defendant owner of the steamship, without making any attempt to procure its reconsideration or modification by the Board, procured from this court a writ of certiorari under the provisions of section 37 of Act No. 2307, by virtue of which the record of the proceedings had before the board was brought here for review.

The petitioner now contends (1) that the Board erred in attempting to substitute its own opinion as to matters of business policy for that of petitioner; (2) that the Board exceeded its jurisdiction in endeavoring to compel petitioner to establish and maintain a fixed schedule of arrivals and departures for his steamers; (3) that the order

of the Board, if enforced, will deprive the petitioner of liberty and property without due process of law and deprive him of the equal protection of the law and will amount to a taking of his property for public use without compensation; (4) that the order of the Board is void because no notice was given to petitioner of the intention of the Board to make such order; (5) that, as construed by the Board, Act No. 2307 constitutes an unlawful delegation of legislative power; and (6) that the order of the Board is inherently unreasonable.

Since the majority opinion rests the ruling of the court setting aside the order exclusively on the contentions of counsel under the fourth of these alleged grounds for reversal of the order of the Board, I shall substantially limit myself at this time to a discussion of the precise ground upon which the action of the majority is predicated, merely expressing my opinion that the Board had full power and jurisdiction to promulgate the order in question, with regard to which I made the following observations in answer to contentions as to its alleged inherent unreasonableness in my dissenting opinion filed at the time of the suspension of the order pending these proceedings:

"To my mind, the order is so plain, simple and direct that it cannot fairly be construed so as to admit of criticism of this character. It merely requires the petitioner to do what is being done every day by other steamship companies throughout the Islands, and throughout the civilized world wherever "men go down to the sea in ships" that is to say, to establish and maintain a fixed schedule of arrivals and departures for his steamship, subject only to modifications necessitated by wind or weather or other insurmountable difficulties. It leaves the manner of compliance with the order to the owner of the vessel, and asks nothing of him except that, so long as he holds himself out as a common carrier between the ports specified in the order, he shall carry on his business in a manner which the board is of the opinion would be in the interest of the public, and which common experience has shown to be entirely practicable in like situations.

"Had the board attempted to interfere to the extent of itself fixing a schedule to which the owner of the vessel would be required to adhere, it might well be objected that, in view of the peculiar nature of the business in which he has engaged and of the conditions under which he operates his steamship, the adoption by the board of such a schedule would constitute an undue and an unreasonable interference with his control over his own property; and no matter what schedule might be fixed by the board, strong reasons could be and doubtless would be advanced in support of a claim that the operation of a steamship under that schedule would be unreasonable, burdensome and impracticable."

The majority opinion rests wholly upon the ground "that there is not only absolutely nothing in the record to support the order of the Board but also that such order is wholly outside the issues raised by the pleadings, is contrary to the theory on which the proceedings were heard and tried, and is a complete surprise to the appellant who had no notice that the subject-matter of the order was before the Board for consideration and was, therefore, deprived of an opportunity to be heard with respect thereto."

In support of this ruling, the pleadings and the evidence before the Board are subjected to searching scrutiny and recourse is had, as it seems to me, to the most technical rules of pleading and the strictest rules of judicial interpretation in support of the contention that the order is outside the issues raised by the pleadings and came as a complete surprise to the appellant.

I am convinced that no such conclusion is sustained by the record, and certain it is that appellant should not be heard to set up such a contention for the first time on appeal to this court. Under the most elementary principles of orderly procedure, it was his duty, if in truth and in fact he was completely surprised by the order of the Board, to apply to the Board for a reconsideration of its action before coming to this court for redress upon that ground. The record discloses that immediately upon the entry of the order he instituted these proceedings for review without

again appearing before the Board, and without any intimation to the Board that its action in the premises had taken him by surprise or deprived him of an opportunity to be heard with respect thereto. Had he done so, there can be little doubt that he would have been given the fullest opportunity to submit any additional objections he might have desired to advance against the issuance of the order and to support such objections with evidence; but he chose rather to apply to this court forthwith, and, having done so, he should not be heard to complain here, for the first time, that he had no opportunity to be "heard upon the subject-matter of the order" issued by the Board. The duty that rested upon him to seek redress from the Board itself, if he was in fact surprised, before making any attempt to have the order of the Board set aside on that ground, was not imposed by any mere technical rule of procedure, but rather by the plainest principles of fair dealing with the Board and with this court, and by those orderly rules of procedure which, in the very nature of things, should control in all proceedings such as those now under review.

But I do not believe that the appellant was in fact surprised by the issuance of the order by the Board. Doubtless he did not know just what action would be taken by the Board until the order was issued after the hearing, but the whole record clearly discloses that he was fully appraised as to the purpose and object of the proceedings, and that he well knew that the inquiry based upon the complaint filed with the Board was conducted with a view to ascertain what measures, if any, should be adopted by the Board to require the owner of the steamship L. R. Yangco to maintain a sailing schedule for that vessel of which the public would be duly advised and which would not be subject to arbitrary change.

While the complainant is not a lawyer, nothing could be clearer than that in filing his complaint he was not seeking redress for a private injury, nor attempting to recover compensation for the loss and inconvenience to which he was exposed by the particular instance of gross disregard for the public interests by the master of the steamship L. R. Yangco set out in his complaint. He knew that no such relief could be had at the hands of the Board. Clearly, his sole purpose and object in filing his complaint was to secure some action from the Board which would prevent the recurrence of similar incidents in the future. Basing his complaint on a specific instance of (1) failure to follow out sailing schedule as specifically advertised and (2) failure to notify the public at the port of Capiz of a change in routing, he sought relief from the recurrence of such incidents, and specifically prayed that the master of the vessel be restrained from "giving out unreliable information which deceives the public and causes undue annoyance, expense, and delay."

To this complaint the owner of the vessel answered under the advice of counsel, admitting the truth of the facts alleged in the complaint and expressing regret for the inconvenience caused the complainant; but, in response to complainant's prayer for relief, asserted that he does not undertake to maintain any fixed schedule of arrivals and departures for the steamer L. R. Yangco; that when he did announce such a schedule he had the right to abandon it at will, for his own convenience and commercial advantage; and that in future he would expressly reserve that right in all published schedules for the sailing and departures of his vessels.

Reading this answer together with the complaint, it seems to me that the appellant himself tendered as the very issue of the inquiry, and of the proceedings had before the Board, his contention that he did not undertake to maintain a fixed schedule for his vessel and that he should not be required to do so. How then can he claim to be surprised by an order directing him to fix and maintain such a schedule; and on what grounds can it be said that such "an order is wholly outside the issues raised by the pleadings?" The obvious remedy against the recurrence of such incidents as those complained of was the issuance of an order requiring the owner of the vessel to maintain a fixed schedule between its regular ports of call, wind and weather permitting; and that the appellant so understood is clearly disclosed by his answer, wherein he challenges the power of the Board to issue the order by asserting his right to depart from his published schedule at will, a challenge which he reiterated again and again

during the proceedings, and renews in his brief filed on his appeal.

If, however, the appellant could have had any doubt or misunderstanding as to the nature, purpose and object of the inquiry conducted by the Board prior to the hearing, it seems to me that such doubt or misunderstanding must have been dissipated by the course of the proceedings thereafter.

One of the shipowner's managers, assisted by counsel, was given an opportunity to be heard in support of the allegations of the answer, and was thereafter subjected to an examination by a member of the Board as to the schedule theretofore maintained by the vessel as to its regular ports of call, as to its mode of announcing to the public the hours of departure and arrival from the various ports of call, as to the nature of the service rendered to the public by the vessel; and finally, the witness was asked if he had any plan by which "the difficulties indicated in this complaint can be avoided" and by which he "could accommodate the business of the vessel to the necessities of the public." It seems to me that it must have been apparent to the appellant and his counsel that the Board was not engaged merely in the investigation of past failures in the performance of his duties for which the complainant did not even pray for redress, and for which the Board had no power to grant redress as appellant and his counsel well knew. Appellant and his counsel must have known and did know that the object of the inquiry was to ascertain what measures, if any, could be adopted by the Board to require him to maintain a sailing schedule for the steamship L. R. Yangco of which the public would be duly advised, and which would not be subject to arbitrary change; and the order as finally entered is clearly within the issues raised by the pleadings, and could not have surprised the appellant in any other sense than that it failed to recognize his contentions, vigorously renewed in his brief on appeal, that he had a constitutional right to run his vessel as he pleased and to change or modify the sailing schedule at will, without regard to the interests or the convenience of the public.

I shall not discuss at length the contention of appellant that the evidence of record does not reasonably sustain the order of the Board. The undisputed testimony discloses that the vessel is licensed to engage in the coast wise trade of the Philippine Islands; that she plies regularly between the various ports mentioned in the order; that she carries passengers and freight; that the published schedule of the respondent expressly reserved the right to change the route without previous notice to the public; that the route is occasionally changed without notice, and that such a change was made in the particular instance complained of, to the great inconvenience of the traveling public. This evidence is unquestionably sufficient to "support reasonably" an order to the appellant to establish, maintain and publish a fixed schedule, subject to weather conditions or other insuperable obstacles, if the Board was correct in its ruling that the maintenance of a fixed schedule by a coasting vessel plying regularly between certain ports of call, would subserve the public interests better than a schedule subject to arbitrary change by the owners without notice to the public. It is true that there is no direct evidence in support of this ruling, but in the absence of clear and convincing evidence to the contrary, I think that the Board cannot be said to have acted "unreasonably" in assuming the truth of that proposition as a matter of public knowledge, of which the Board as well as the courts of these Islands may take judicial cognizance.

Had the Board attempted to prescribe a fixed schedule or had it attempted to lay down specific rules and conditions for the maintenance of a schedule, evidence would have been necessary to support its action; but the evidence disclosing as it does that the vessel plies regularly between the ports mentioned in the order, carrying passengers and freight, common knowledge and experience sustains a ruling by the Board that the public interests would be subserved by the denial of the right asserted by the owner to make arbitrary changes in her schedule, in the absence of positive proof to the contrary.

The appellant, had he so desired, might have offered evidence on this point at the hearing or in support of a motion for reconsideration, but no such evidence was submitted to the Board; and in the absence of such evidence, the Board was clearly justified in entering its order.

The truth is that the real contention of the appellant before the Board and in this court on appeal rests upon his claim of a constitutional right to run his vessel as he pleases without being subjected to the interference or control of the Government of the Philippine Islands or any of its agencies; and upon the further contention that the Board of Public Utility Commissioners is not clothed with power to issue such an order as that under consideration, it matters not upon what evidence its action is predicated.

I think it is to be regretted that the majority of the court has declined to meet and decide the real issues raised and discussed on this appeal, and has seen fit to rest its reversal of the order of the Board exclusively upon what seems to me to be mere technical rules of pleading and practice applied to proceedings had before the Board. It was never contemplated by the legislator that the proceedings had before the Board should conform to the rigid rules prescribed in ordinary courts of law. All that can fairly be required in this regards is that the interested parties be given a reasonable opportunity to be heard in any matter affecting their rights or property and that the action of the Board be predicated upon evidence reasonably sufficient to support it.

The real questions presented in these proceedings are of far-reaching importance, and some of them, at least, go to the very foundation of the modern system of public regulation of the business of common carriers, and public utilities generally. In the language of Mr. Friedman:

"In this great branch of our Government the law is at the threshold of new interpretation. It is to be hoped that these laws will be interpreted in a broad and comprehensive manner so that the working of the commission will not be interfered with, and may result in the greatest possible benefit." (A Word About Commissions, Har. L. Review XXV, 715.)

In this regard the Supreme Court of the United States has clearly pointed the way, and in numerous decisions of that great tribunal we find reflected the liberal and open minded attitude which should be assumed by the courts generally in dealing with matters of public regulation. In the recent case of *German Alliance Ins. Co vs. Lewis*, decided in the October term, 1915, we find the following comment upon a certain conservatism of mind, which it seems to me has inspired the majority of our court in dealing with the case at bar as also in the disposition of several other cases which have been brought before us for the review of orders entered by the Philippine Board of Public Utility Commissioners:

"Against that conservatism of the mind which puts to question every new act of regulating legislation, and regards the legislation invalid or dangerous until it has become familiar, government—state and national—has pressed on in the general welfare; and our reports are full of cases where in instance after instance the exercise of regulation was resisted and yet sustained against attacks asserted to be justified by the Constitution of the United States. The dread of the moment having passed, no one is now heard to say that rights were restrained or other constitutional guaranties impaired." (*German Alliance Ins. Co. vs. Lewis*, 233 U. S., 389.)

The order entered by the Board of Public Utility Commissioners in this case should be sustained.

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