

TEODORO R. YANGCO, PETITIONER, VS. BOARD OF PUBLIC UTILITY COMMISSIONERS, RESPONDENT.*G. R. No. 11203. September 29, 1915*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-11203/>

Upon consideration of the petition in case No. 11203, T. R. Yangco vs. The Board of Public Utility Commissioners, in which the petitioner prays that the order of said Board, issued in case No. 290, be suspended during the pendency of said proceedings, the court resolved that:

By these presents, the said order issued by the Board of Public Utility Commissioners in case No. 290 is suspended until further order of this court. Counsel for the petitioner will be required to file his brief in said case within the period of thirty days, and a copy thereof will be furnished the Attorney-General who in turn will file his within the period of thirty days following. When both briefs have been filed, a day will be set for the hearing on the merits.

CONCURRING**MORELAND, J., :**

It seems to me that the reasons which are the foundation of this decision ought to be set out in order that it may be distinguished from the decision of the court in the case of Manila Electric Railroad and Light Company vs. Board of Public Utility Commissioners (30 Phil. Rep., 387) in which we refused to suspend an order which, so far as appears superficially, is the same kind of an order issued by the Board in this case and the operation of which we suspend on application of the steamship owner, the petitioner in this case, pending resolution on the merits by this court. The order in this case was made in a proceeding before the Board of Public Utility Commissioners begun on the complaint of the district engineer of Capiz (whoever he may be) against T. R. Yangco to compel him to run the steamship Luis R. Yangco in accordance with a schedule to be by him published, stating definitely the time of arrival and departure of that steamship at and from the ports of Boac, Romblon, Capiz and New Washington.

After full hearing 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 having been made to take effect on the 1st day of October, 1915, T. R. Yangco on the 20th day of September, 1915, petitioned this court, under section 37 of Act No. 2307, for a review of said order, at the same time moving, under section 38 of said Act, as amended, for a suspension of the order pending the decision of the question on the merits.

The resolution of the court with which I am concurring orders the suspension as prayed, and my purpose is to give briefly the reasons which impel me to a concurrence in that suspension.

I am of the opinion that there are at least four cases, some of them more or less dependent on each other, in which an order issued by the Board of Public Utility Commissioners of the kind found in the present case should be suspended. The first is where the order is so indefinite in its terms that it cannot be complied with by the person to whom it is directed. The second exists where, although the terms of the order are not so indefinite that they cannot be complied with, they are, nevertheless, so general in character and leave so much to the discretion of the person to whom the order is directed, that, while his compliance is strictly in accordance therewith, such compliance will not be satisfactory to the Board or the complainant, and it will likely result that such person will be obliged to face another proceeding to determine whether the compliance is, from the viewpoint of the Board, a compliance. The third case is disclosed where it appears on the hearing for a motion to suspend that the court will probably, on the resolution of the question on the merits, find in favor of the petitioner. The fourth case is presented where the order of the board is so general in its terms and leaves so much to the person to whom it is directed that compliance therewith may result in great prejudice to public interests. There may be other cases but these are sufficient for the matter in hand.

It appears from the facts found in the record or admitted by counsel on the hearing that the steamship in question ordinarily makes three trips a month to the ports mentioned in these proceedings. It is clear from the terms of the order that Yangco would comply therewith if he adopted, published and adhered to a schedule under which a visit to the ports mentioned would occur only once a year. While such a schedule would be a fixed schedule, and, therefore, a compliance with the order, it would undoubtedly be unacceptable to the Board, or to the complainant before the Board, and, as a result, the owner would be again called before it on another proceeding for the purpose of requiring him to make a schedule more consistent with the interests of the people living in the ports to which the schedule would apply.

It is clear that a compliance with the order in the manner just referred to would result in greatly decreasing the number of visits to the ports named, would probably adversely affect the commercial interests of those ports and the country tributary thereto, and might, as a consequence, be exceedingly prejudicial to the public interests. It is clear, therefore, that the order might be complied with in such a way that the public interests would suffer.

I do not believe, therefore, that the order should be allowed to go into force on the date stated.

The grounds here given for the suspension of the order before us were not found in the case of the Manila Electric Railroad and Light Company vs. Board of Public Utility Commissioners.

DISSENTING

CARSON, J.,

I dissent.

The order of the Board of Public Utility Commissioners should not be suspended pending proceedings for the judicial review of the action of the Board, in the absence of a showing of insurmountable difficulty in compliance therewith; or of a showing of the danger of grave and irreparable loss and damage to the petitioner, and a further showing that the probable loss and inconvenience to the petitioner resulting from the maintenance of the order in force would be greater than the probable loss and inconvenience to other interested parties and to the public generally involved in its suspension.

In order to avoid unnecessary delay in the filing of the order of the court in this matter, I annex hereto a copy of an unfiled opinion wherein I set forth the grounds upon which I joined in the minute order of this court denying

the application of the Manila Electric Railway and Light Company for a suspension of an order of the Board under consideration in case No. 10241. That opinion was not filed because the court had disposed of the main issues involved on the former proceedings before it was practicable to have it prepared, translated and considered by the court. It is filed now because it sufficiently sets forth the grounds as I understand them, upon which the court declined to suspend the order in the former case, and upon which it ought to decline to suspend the order in the case now before us.

I cannot agree with the reasoning set forth in the concurring opinion of Justice Moreland, except in so far as he intimates that the ruling in this case is an apparent reversal of the opinion announced in the former case, unless this ruling is based on the grounds set forth by him.

After full hearing, the Board, having concluded that, in the interests of the public, the steamship Lids R. Yangco should be required to maintain a fixed schedule of arrival and departure at certain ports between which its owner holds it out as a common carrier engaged in the interisland coastwise trade, issued 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."

It is contended that the owners of the steamship Luis R. Yangco might so construe the order that it might be complied with in a manner not acceptable to the Board itself, and further that "the order might be complied with in such a way that the public interests would suffer."

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 jateculiar 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 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.

I content myself now by affirming that I do not think that a plain, simple and direct order of the Board of Public Utility Commissioners should be suspended or annulled merely because the person to whom it is directed might misconstrue it, and might be guilty of abuses under it to the prejudice of the public. The Board is amply provided by law with means whereby such abuses may be guarded against. Paraphrasing language of Justice Holmes in another connection in the case *Paraiso vs. United States* (207 U. S., 368, 372) I do not think that orders of the Board should be suspended because of the danger that the persons or companies to whom they are directed may be disposed to misconstrue or misapply any order which is not framed so as to "exclude every misinterpretation

capable of occurring to an intelligence fired with a desire to pervert."

The following is a copy of the opinion prepared for file in case No. 10241 hereinbefore mentioned:

"[G. R. No. 10241.]

"The Manila Electric Railroad and Light Company, petitioner, vs. The Board of Public Utility Commissioners, respondent.

"CARSON, J.:

"The petitioner in these proceedings alleges:

" '1. That petitioner is a foreign corporation, duly authorized to transact business in the Philippine Islands, having its principal place of business therein in the city of Manila, and engaged in the business, among others, of a public carrier of passengers for hire by means of an electric street railway in the city of Manila and its suburbs, and is a public utility within the meaning of Act No. 2307, as amended; that respondent is the Board of Public Utility Commissioners created by Act No. 2307, as amended;

" '2. That the city of Manila, in the year 1903, by authority of Act No. 484, granted, for a valuable consideration, and by its Ordinance No. 44, to Charles M. Swift, a franchise for the construction, maintenance and operation of a street-railway system for the carriage of passengers for hire in the city of Manila; that said franchise contains the following provision: "Members of the police and fire departments of the city of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed;" that the aforesaid franchise, with all its privileges and obligations, was duly transferred and assigned by said Charles M. Swift to petitioner, and that petitioner, by virtue of said franchise, is now operating, and for more than nine years has operated, an electric street-railway system in the city of Manila and its suburbs for the carriage of passengers for hire;

" '3. That from the beginning of its operation as aforesaid petitioner has constantly imposed, and still imposes, the restriction upon the enjoyment of free transportation on petitioner's cars by members of the police and fire departments of the city of Manila wearing official badges that such badges shall be worn visibly so that the character of the person so enjoying free transportation may continuously and at all times be apparent during such transportation; that the city of Manila and the police department thereof have accepted such restriction and have acquiesced therein from the beginning of petitioner's operation and for a period of about nine years; that the aforesaid restriction is reasonable and proper to prevent frauds upon petitioner, and to enable petitioner and its employees to determine what persons are entitled to free transportation and adequately to check and verify the collection of fares; that petitioner has carried, and is willing to carry, without charge, on its cars, all members of the police and fire departments of the city of Manila wearing official badges who conform to the aforesaid restriction;

" '4. That respondent, on the 20th day of June, 1914, after notice and hearing, made an order in writing, and caused notice of the same to be given to petitioner, whereby the respondent required petitioner on and after the 1st day of July, 1914, to furnish free transportation to members of the police department of the city of Manila belonging to the secret service bureau thereof wearing official badges concealed about their clothing in such a way that said badges might be displayed so conductors or inspectors on the petitioner's cars when required so to be displayed for the purpose of identification; that thereafter a rehearing was granted by respondent to the petitioner, and pending such rehearing a suspension of the aforesaid order was granted until further order of respondent; that on the 29th of August, 1914, respondent made an order, and caused notice thereof to be given to petitioner, reaffirming the aforesaid order of respondent of June 20, 1914;

" '5. That respondent claims and asserts that its aforesaid order of June 20, 1914, is, without further process or proceedings, obligatory upon petitioner and enforceable against petitioner in accordance with section 32 of Act No. 2307; that there is no appeal from said order to any court or authority, nor is there any plain, speedy, or

adequate remedy available to petitioner other than as provided by sections 37, 38, and 39 of Act No. 2307;

" '6. That respondent is, and was, without jurisdiction to make the aforesaid order of June 20, 1914, and that said order is beyond the jurisdiction of respondent; that noncompliance on the part of petitioner with the said order of June 20, 1914, will entail upon petitioner the defense of actions instituted under the provisions of section 32 of Act No. 2307, and other litigation, and controversy with members of the police department of the city of Manila claiming the benefits of the said order of June 20, 1914; that the effect of the said order of June 20, 1914, unless annulled, will be to take the property of petitioner, to wit, the right to collect fares for the carriage of passengers, without due process of law, and to take said property of petitioner for public use without compensation;

" '7. That there was, and is, no evidence before the respondent to support reasonably the aforesaid order of June 20, 1914.'

"Wherefore petitioner prays:

" ' (1) That the order of respondent, the Board of Public Utility Commissioners, of the 20th day of June, 1914, ordering the petitioner, the Manila Electric Railroad and Light Company, to furnish free transportation to the members of the police department of the city of Manila belonging to the secret service bureau thereof wearing official badges concealed about their clothing be superseded and stayed pending the final order of the Supreme Court herein;

" ' (2) That the proceedings in this cause be expedited in accordance with the provisions of section 39 of Act No. 2307, and that the appropriate rules and orders to that end be made by the court;

" ' (3) That the respondent, the Board of Public Utility Commissioners, be required to certify to the Supreme Court the evidence presented to the Board, together with the finding of the Board and all orders issued thereon;

" ' (4) That the aforesaid order of the Board of June 20, 1914, and the order reaffirming the same of August 29, 1914, be annulled and set aside;

" ' (5) And that petitioner have such other and further relief as may be just and appropriate.'

"Together with its petition, petitioner filed a supersedeas bond in the sum of P5,000, and in support of the prayer of the petition for a stay of supersedeas of the order complained of, petitioner submitted the deposition of W. Lawrence and a certified copy of the order, which are as follows:

" 'W. H. Lawrence, being first duly sworn, deposes and says:

" 'That deponent is a member of the firm of Lawrence, Ross & Block, attorneys for petitioner in the above entitled cause; that deponent has been counsel for petitioner during all the period of petitioner's existence and operation in the Philippine Islands, and has personal knowledge of the facts stated in this deposition, except as to facts stated on information and belief; that the petition filed with the Clerk of the Supreme Court in the above entitled cause was prepared and signed by deponent; that the allegations of said petition, so far as they purport to state facts, are true, and, so far as they purport to state conclusions of law, are, in deponent's opinion, well founded; that from the beginning of petitioner's operation of an electric street-railway system in the city of Manila, in the year 1905, until after the 29th day of August, 1914, members of the police department of the city of Manila have not been granted free transportation on the cars of petitioner except when wearing official badges openly and visibly throughout the enjoyment of such transportation; that deponent is informed and believes that until the year 1914 no claim on the part of the city of Manila or the police department thereof was made to petitioner to the effect that members of the police department wearing concealed badges were entitled to free transportation under the terms of petitioner's franchise; that in the hearing before the Board of Public Utility Commissioners sought to be reviewed in the above entitled cause, the chief of the secret service division of the police department of the city of Manila testified that during a period of about nine years said

secret service division had expended for transportation on the cars of petitioner a total of between P41,000 and P42,000; that the city of Manila has begun an action in the Court of First Instance of the city of Manila against petitioner, in civil cause No. 12147, and has filed a complaint therein bearing date of August 22, 1914, in which it is alleged that the city of Manila has paid for transportation of detective members of the police department since March 3, 1905, "a sum over P41,927.52;" that since the 25th day of August, 1914, and in reliance upon the orders of the Board of Public Utility Commissioners sought to be reviewed in the above entitled cause, the chief of police of the city of Manila has stated to petitioner that members of the secret service of the police department of the city of Manila have been instructed to insist upon the privilege of free transportation upon the cars of petitioner upon displaying to conductors of such cars official badges concealed under the clothing except at the moment of such display, and to arrest conductors and other employees of petitioner who refuse to grant free transportation under such circumstances; that deponent is informed and believes that the city of Manila has heretofore kept account of its expenditure for transportation of members of the secret service division of its police department wearing concealed badges, and can without difficulty continue to keep account of such expenditures; that deponent is informed and believes that it will be very difficult, and perhaps impossible, for petitioner to keep an account which will be satisfactory to the city of Manila or to the courts of the number and amount of fares that will be due to petitioner from the city of Manila for the transportation of detectives if the orders sought to be reviewed in the above entitled cause shall eventually be set aside and if the effect of such orders be not stayed or suspended pending the final decision in the above entitled cause; that the petition presented in the above entitled cause, and the application therein contained for an order of supersedeas, have been presented in good faith, and not for the purpose of effecting a delay; that deponent believes the cause of action stated in the aforesaid petition to be meritorious and that the Supreme Court should grant the relief applied for.'

"The certified copy of the order of the Board is as follows.

" 'THE GOVERNMENT OF THE PHILIPPINE ISLANDS, BOARD OF PUBLIC UTILITY COMMISSIONERS.

" 'MANILA.

" 'CASE NO. 93.

" 'Your committee begs to report upon case No. 93 and recommend that the accompanying opinion and order be adopted and published as an opinion and order of the Board:

" 'In the matter of the furnishing by the Manila Electric Railroad and Light Company of free transportation to members of the secret service of the city of Manila.

" 'Appearances: Mr. John W. Green, chief of the secret service bureau, complainant, Mr. C. N. Duffy, general manager, Mr. J. S. Cairns, assistant general manager, and Mr. W. H. Lawrence, attorney for the Manila Electric Railroad and Light Company, defendant.

" 'OPINION AND ORDER.

""DEWITT, M.:

"" "This case came before the Board upon a complaint presented on the 28th day of May, 1914, by John W. Green, chief of the secret service of the city of Manila, and addressed to the chief of police of the city of Manila, praying that the street car company be compelled to furnish free transportation to the members of the bureau of secret service under the terms of its franchise and that said company be prevented from imposing upon the members of that office the prohibitory restriction of being compelled to wear their badges outside their coats in order to ride on the street cars free. It is also requested that the street car company be compelled to refund to the police department the total amount expended by said department for street car transportation for the members of the secret service bureau. This communication was forwarded to the Board of Public Utility

Commissioners through the Municipal Board of the city of Manila by the chief of police on the 28th of May, 1914, and reached this Board after the Municipal Board had taken the opinion of the city attorney on the legal point involved. On June 18, 1914, this Board required the Manila Electric Railroad and Light Company to appear before it on the 19th of June, 1914, to show cause why it should not be required to furnish free transportation to the members of the department of police of the city of Manila belonging to the secret service bureau.

" ' "On the date appointed for the hearing Mr. W. H. Lawrence, Mr. C. N. Duffy, and Mr. J. S. Cairns, appeared for the street car company, and Mr. John W. Green appeared for the secret service bureau of the police department of the city of Manila.

" " "From the evidence taken at the hearing it appears that from May 3, 1905 to May 31, 1914, the secret service bureau of the police department of the city of Manila has expended for street car tickets the total sum of P41,927.52.

" ' "Paragraph 16 of the franchise of the Manila Electric Railroad and Light Company provides:

" " "Members of the police and fire departments of the city of Manila wearing official badges shall be entitled to ride free upon the cars of the grantee, subject to such reasonable and proper restrictions as may be imposed."

" " "At the hearing the company admitted that members and employees of the secret service bureau of the city of Manila are members of the police department and expressed its willingness to furnish the transportation in question free, provided those members of the secret service bureau using such transportation be required to wear their official badges openly and conspicuously. The contention is that this is a reasonable and proper restriction in order to enable the inspectors and spotters of the company to check up the conductors. To this Mr. Green answered that the members of his bureau have always worn their official badges, but that by reason of the very nature of their employments they could not be required to wear their badges openly and conspicuously, thereby disclosing their identity as secret service men and defeating the very purpose of their employment. Mr. Green stated that it was in order to avoid this that the secret service bureau had paid for the transportation in the past, notwithstanding the provisions of the franchise above quoted.

" " "It was thereupon suggested to the representatives of the company that the difficulty of checking the conductors could be solved by furnishing tickets to the chief of the secret service bureau, to be distributed among his men as needed. The representatives of the company seemed to admit that the distribution of tickets as suggested would solve the checking difficulty. They objected, however, to the furnishing of tickets free to the members of the bureau of secret service without stating specifically the grounds for such objection. The real grounds probably are that they do not want to furnish the transportation in question free. The suggestion as to tickets, however, discloses that the checking difficulty suggested by the street car company is not an insurmountable one, and the Board so finds.

" " "The restriction imposed by the company, requiring members of the secret service to wear their badges openly and conspicuously, is an unreasonable and improper restriction. It is equivalent to withholding from the members of the secret service the transportation to which they are entitled under the terms of the company's franchise, and has so resulted. Members of the secret service wearing official badges concealed about their clothing in such a way that said badges may be conveniently displayed when required for purposes of identification are 'wearing official badges' and complying with the provisions of the franchise.

" " "We believe that the provision as to reasonable and proper restrictions inserted in the franchise has reference to such rules as may be adopted for the purpose of preventing the misuse of the transportation accorded under the terms thereof. We have already indicated a simple method whereby this may be done. We propose, however, in our order to leave the company free to solve the checking difficulty in any way that may appear most convenient to it. We simply propose to require the company to comply with the terms of its franchise in accordance with the authority conferred upon this Board by paragraph (a) section 16 of Act No. 2307, as

amended.

" "We have no jurisdiction to order the restitution of the money unjustly collected, that being a matter for the ordinary courts of justice.

" 'The Manila Electric Railroad and Light Company is, therefore, ordered to furnish free transportation to the members of the police department of the city of Manila belonging to the secret service bureau thereof wearing their official badges, whether openly or concealed about their clothing in such a way that said badges may be displayed to conductors or inspectors on the company's cars when required to do so for purposes of identification.

" ' "This order shall take effect the first day of July, nineteen hundred and fourteen."

" 'Member Bonsal, concurring.

" 'President Cui, absent.

" 'A true copy.

" 'C. C. MITCHELL,

" 'Secretary, Board of Public Utility Commissioners.

"9/12/14.'

"Upon the filing of the petition, an application was made to one of the members of this court for a stay or suspension of the order of the Board, pending the final adjudication of petitioner's prayer for its annulment. The member to whom it was submitted properly declined to entertain it, and referred the application to the court which was then holding daily sessions. While the power to suspend such orders is conferred upon this court or any one of its members, a due regard for the orderly procedure which should control in all judicial proceedings imposes upon each member of the court the duty to decline to entertain such an application or to exercise the power thus conferred upon him, while the court is holding its daily sessions, except perhaps in a case where the application is made at an hour when the court is not actually in session and it is made to appear that delay of action on the application for a stay or suspension until the hour set for the daily session of the court would expose the petitioner to irreparable and irremediable loss or damage. It would be an intolerable practice which would permit a petitioner to go the rounds of each individual member of the court, while the court is in session, before submitting his application to the court itself in the hope that he might find one member who might not happen to be in agreement with the majority of his brethren as to the propriety of granting the stay.

While a single member of the court would appear to have the power to grant a stay although the court itself had already declined to do so, it is manifest that in such a case it would be his duty to decline to entertain the application; and there would seem to be little if any difference in the impropriety of granting a stay under such circumstances, from that involved in the granting of such a stay by a single member while the court is in session, in the absence of a showing that irreparable or irremediable damage would result from the delay necessarily involved in the submission of the application to the court itself.

"On motion of petitioner the parties were given an early opportunity to be heard upon the prayer of the petition for the stay of supersedeas of the order of the board, pending the final adjudication of petitioner's prayer for its annulment, and thereafter the following order, denying the prayer for the stay or supersedeas of the order of the Board, was entered on the minutes of the court dated September 12, 1914.

" 'In case No. 10241, entitled "The Manila Electric Railroad and Light Company petitioner, vs. The Board of Public Utility Commissioners, respondent," the court made the following order: "Without prejudice to any justice of this court writing a more extended opinion later, by these presents that part of the petition is denied

which prays for the suspension until further order of the court of the order issued by the Board of Public Utility Commissioners, dated June 20, 1914, by virtue of which the petitioner, The Manila Electric Railroad and Light Company, was directed to furnish free transportation to members of the police department of the city of Manila belonging to the bureau of secret service of said department, who wear their official badges concealed beneath their clothes." Justice Johnson refrained from voting until the case was heard on the merits.'

"This opinion is prepared and filed to set forth the grounds upon which those signing it Concurred in the above order.

"From the oral argument of counsel for petitioner, and from an examination of the petition itself together with the deposition filed in its support, it appears that the prayer for the suspension of the order pending the final adjudication of these proceedings is based more especially on three separate grounds; (first) that noncompliance with the order will entail upon petitioner the defense of actions instituted under the provisions of section 32 of Act No. 2307, which prescribed a penalty of P200 for every day's default of compliance with any order of the Board which has become effective; (second) that noncompliance with the order may result in grave breaches of the peace, and public disorder, as a result of conflicts and controversies between the employees of the company and persons seeking to ride free upon the cars of petitioner, claiming the right so to do as members of the police department; (third.) that it will be very difficult, and perhaps impossible, for petitioner to keep an account, which will be satisfactory to the city of Manila or to the courts, of the number and amount of fares that will be due to petitioner from the city of Manila for the transportation of detectives, during the period which must elapse before the questions involved in these proceedings can be finally adjudicated.

"The contention of the petitioner based on the fear that noncompliance with the order of the Board Would impose upon it the defense of proceedings instituted for the enforcement of the penalties prescribed in section 32 of Act No. 2307 is wholly without merit in the absence of a showing, at least, that compliance with the order is impossible or impracticable, or would work irreparable injury to petitioner. The statute imposes upon the petitioner the duty of compliance with the lawful orders of the Board, under severe penalties for default, and it further expressly prescribes that orders promulgated by the Board shall not be suspended pending proceedings for their revision in this court, unless this court, or some Justice thereof, shall so direct. Manifestly, if the mere fact that the statute prescribes severe penalties for noncompliance with the orders of the Board were, in itself, a sufficient ground for the issuance of an order of suspension, the result would be that every person instituting proceedings in this court for the review of an order of the Board would be entitled, pending the proceedings, to a suspension of the order, upon application therefor. It is clear that such was not the intention of the legislator. Obedience to the order will relieve the petitioner from all danger of prosecutions for 'defaults of compliance' therewith. It follows that neither the severity of the threatened penalties prescribed for disobedience, nor the danger of prosecutions therefor, affords any argument in support of a prayer to be relieved from the statutory obligation of obedience, in the absence of a showing that for some sufficient reason it is impossible or impracticable to obey the order or that compliance with the order pending the proceedings looking to its revision, would expose petitioner to irreparable loss and damage.

"Similar reasoning disposes of the contention that this court should suspend the order because of noncompliance therewith pending the proceedings may give rise to grave breaches of the peace and public disorder as a result of conflicts between the employees of the company and persons seeking to ride free upon the cars of the company. There might be some ground for the prayer for the suspension of the order had a showing been made of a probability that compliance therewith pending these proceedings would result in such breaches of the peace and public disorder. But the order itself suggests a method whereby it can be complied with by the company without the slightest danger of disorder, confusion or breaches of the peace. By issuing specially marked or numbered tickets to the chief of police for the use of secret service employees, and requiring the production of one of these tickets and the exposure of a police badge by every person claiming the right of free transportation as a secret service agent, all reasonable possibility of conflict, disorder or

confusion would seem to be eliminated.

"The third ground relied upon by petitioner in support of his prayer for a suspension of the order pending the final disposition of these proceedings raises, for the first time, a question of vital importance.

"It would appear that should this court finally hold with counsel for petitioner that the order complained of is unlawful and should be annulled, the company will be entitled to recover from the city for its services in transporting secret service employees pending these proceedings, and it must be admitted that unless the order be suspended, the street car company will be put to some additional expense and inconvenience in keeping a satisfactory account with the city for transportation of its secret service employees. But we see no insurmountable difficulty in the keeping of the account. Indeed we are satisfied that a correct account, satisfactory to the city and competent and sufficient to sustain an action for these services in a court of law can readily be kept by the adoption of the plan suggested by the board. At relatively small expense, appropriately stamped tickets can be furnished the city for the use of its secret service agents, to be honored only when presented by passengers exposing official police badges to the conductor. Operating in this manner it would seem entirely practicable to eliminate all serious difficulties in accounting and checking; and if any other reasonable regulation looking to the same suggests itself to the experienced officials of the company, the order seems to leave it optional with them to adopt it.

"It is contended, however, that since the company is able and willing to give ample security to the city to secure it from all loss and damage resulting from a stay or suspension of the order, the order should be suspended pending the proceedings in this court for its revision upon the filing of a good and sufficient bond, in like manner as judgments entered in ordinary actions in Courts of First Instance are superseded upon the perfection of an appeal to this court. We cannot agree with this contention. We think that a comparison of the language of the Act creating the Board of Public Utility Commissioners with that of the Code of Civil Procedure clearly discloses the intention of the Legislature that the institution of proceedings looking to the review of any order of the Board by this court should in no case supersede or suspend the order of the Board, except for special reasons; a rule which is precisely the contrary to that of the Code of Civil Procedure which makes the perfection of an appeal operate as a supersedeas of a judgment in ordinary actions, unless execution issues 'for special reasons set forth in the bill of exceptions.'

"Section 144 of the Code of Civil Procedure provides that:

" 'Stay of execution.—Except by special order of the court, no execution shall issue upon a final judgment rendered in a Court of First Instance until after the period for perfecting a bill of exceptions has expired. But the filing of a bill of exceptions shall of itself stay execution until the final determination of the action, unless for special reasons stated in the bill of exceptions the court shall order that execution be not stayed, in which event execution may at once issue. But the court may require as a condition of a stay of execution that a bond shall be given reasonably sufficient to secure the performance of the judgment appealed from in case it be affirmed in part or wholly"

"With this contrast the provisions of sec. 20 of Act No. 2362 amending section 38 of Act No. 2307, which is in part as follows:

" 'The allowance of writ of certiorari or the institution of any proceeding to review any order of the Board by the Supreme Court as aforesaid; shall in no case supersede or stay the order of the Board, unless the Supreme Court, or a Justice thereof, shall so direct, and the appellant may be required by the Supreme Court or a Justice thereof, to give bond in such form and of such amount as the Supreme Court, or the Justice thereof allowing the stay, shall require.'

"The only question that remains for consideration is the nature of the special reasons which will justify or require the stay or suspension of an order of the Board of Public Utility Commissioners pending proceedings looking to its annulment in this court. Our statute rests the determination of this question in the sound judicial

discretion of this court or any Justice thereof to whom the application is made. It would doubtless be impracticable to announce any universal rule that would serve as a sufficient guide in all cases, but we think that in general the issuance of a stay or suspension would not be justified in the absence of a showing that there is danger of grave and irreparable injury unless it be granted, and further that the anticipated damage to the petitioner will be greater than the damage to which others interested in the enforcement of the order would suffer in the event of its suspension pending the proceedings.

"Temporary orders restraining the putting into effect of orders issued by public utility boards or commissioners in the United States are granted in the Federal courts under and by authority of Revised Statutes, paragraph 718 (U. S. Comp. St., 1901, p. 580) which expressly prescribes that such orders may be issued 'if there appears to be danger of irreparable injury from delay. In the circuit court, N. D., Georgia, in the case of Central of Georgia Ry. Co. vs. McLindon et al. (155 Fed. Rep., 974) it was said that the 'granting of such a temporary restraining order, like the granting of an injunction, is within the sound judicial discretion of the court.' In the case of Buffalo Gas Co. vs. City of Buffalo (156 Fed. Rep., 370), a temporary restraining order was issued, 'it appearing that irreparable injury will result from the enforcement of the order during the pendency of the suit.' In the case of New Memphis Gas Co. vs. Memphis (72 Fed. Rep., 952), it was held that 'in determining whether a preliminary injunction should be granted to restrain putting into effect rates declared to be confiscatory, the discretion of the judge should be regulated by the balance of inconvenience or injury to one party or the other.' In the case of Interstate Commerce Commission vs. Southern Pacific Co. (137 Fed. Rep., 606) (reversed on other grounds, 200 U. S., 536), it was held that: 'The United States circuit court will suspend or supersede a decree enjoining carriers from violating an order of the Interstate Commerce Commission, made in a suit brought by the commission under Interstate Commerce Act, paragraph 16, during the pendency of a contemplated appeal from such decree, where it has not been made to appear that the damage to the carrier from the enforcement of the decree will be any greater than would be the damage to the shippers from its suspension.' In the case of Ahem vs. Newton & B. St. R. Co. (105 Fed. Rep., 702), it was held that: 'The enforcement of a statute regulating fares on street railways at the suit of a stockholder in such company will not be restrained notwithstanding there is a serious doubt of the constitutionality of the act, where it is not shown that either the company or the stockholder will suffer an irreparable injury, or what amount of loss they will sustain by a compliance with the act until final hearing.'

"We think that the reasons upon which are based the restrictions of the exercise of the power of the Federal courts in the United States in granting such restraining orders operate in like manner in this jurisdiction to control the exercise by this court of its power to suspend the orders of the Philippine Board of Public Utility Commissioners.

"The Philippine Legislature, by the creation of the Board, indicated its belief that there is a public need, a business necessity, in these Islands for the performance by such a board of the duties imposed upon it. Courts generally, wherever they have been called upon to construe the legislative enactments creating such Boards have recognized and admitted in their decisions that boards and commissions of this kind are important administrative agencies of government which should furnish a satisfactory solution of many intricate and comprehensive business questions that are constantly arising in increasing numbers in connection with the regulation and control of public utilities.

"But the effectiveness of the orders of the Board and the extent of its control must depend to a considerable degree upon the conclusiveness of its findings and the validity of its orders pending proceedings instituted for their review by the courts. The necessary delay attending reviews by the courts and their lack of time and opportunity for investigating situations at first hand constitute the occasion and perhaps the chief reason for the existence of the Board. Suspending its lawful orders pending judicial proceedings must, in the very nature of things, interfere materially with the effectiveness of the Board in the performance of its duties, weaken the confidence of the community in the validity of its proceedings, and oftentimes postpone indefinitely the beneficial results which should result from its investigations and findings.

"We conclude that the orders of the Board should not lightly be disturbed pending proceedings for their judicial review; that the presumption in favor of their validity and constitutionality forbids, as a rule, their suspension except after hearing and notice and upon good cause shown; and that while the power to suspend rests in the sound discretion of the court it should not be exercised in the absence of a showing of danger of grave and irreparable loss, or damage to the petitioner, and that there is reason to believe that the loss and inconvenience to the petitioner resulting from the maintenance of the order in force will be greater than the loss and inconvenience to other interested parties which may result from its suspension.

"While it appears that the petitioner will be put to some inconvenience and expense in checking and keeping an account of transportation furnished the city of Manila under the order, we are of opinion that the order should not be stayed or suspended pending these proceedings, petitioner having failed to make a showing that the maintenance of the order in force will expose it to such grave and irreparable loss or damage as to justify the exercise of our discretion in suspending it."

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