

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. TAN PIACO, VENTURA ESTUYA, PEDRO HOMERES, MAXIMINO GALSA AND EMILIO LEOPANDO, DEFENDANTS. TAN PIACO, APPELLANT.

G.R. No. 15122, March 10, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

Said defendants were charged with a violation of the Public Utility Law (Act No. 2307 as amended by Acts Nos. 2362 and 2694), in that they were operating a public utility without permission from the Public Utility Commissioner.

Upon the complaint presented each of said defendants were arrested and brought to trial. After hearing the evidence the Honorable Cayetano Lukban, judge, found that the evidence was insufficient to support the charges against Ventura Estuya, Pedro Homeres, Maximino Galsa and Emilio Leopando, and absolved them from all liability under the complaint and discharged them from the custody of the law. The lower court found the defendant Tan Piaco guilty of the crime charged in the complaint and sentence him to pay a fine of P100, and, in case of insolvency, to suffer subsidiary imprisonment, and to pay one-fifth part of the costs. From that sentence Tan Piaco appealed to this court.

The facts proved during the trial of the cause may be stated as follows:

The appellant rented two automobile trucks and was using them upon the highways of the Province of Leyte for the purpose of carrying some passengers and freight; that he carried passengers and freight under a special contract in each case; that he had not held himself out to carry all passengers and all freight for all persons who might offer passengers and freight.

The Attorney-General, in a carefully prepared brief, says: "The question is whether the appellant, under the above facts, was a public utility under the foregoing definitions," and was therefore subject to the control and regulation of the Public Utility Commission. "We have not found anything in the evidence showing that the appellant operated the trucks in question for public use. These trucks, so far as indicated by the evidence and as far as the appellant is concerned, furnished service under special agreements to carry particular persons and property. * * * For all that we can deduce from the evidence, these passengers, or the owners of the freight, may have controlled the whole vehicles 'both as to contents, direction, and time of use,' which facts, under all the circumstances of the case, would, in our opinion, take away the defendant's business from the provisions of the Public Utility Act."

In support of the conclusion of the Attorney-General, he cites the case of Terminal Taxicab Co. vs. Kutz (241 U. S., 252). In that case the Terminal Taxicab Co. furnished automobiles from its central garage on special orders and did not hold itself out to accommodate any and all persons. The plaintiff reserved to itself the right to refuse service. The Supreme Court of the United States, speaking through Mr. Justice Holmes, said: "The bargains made by the plaintiff are individual, and however much they may tend towards uniformity in price, probably have not the mechanical fixity of charges that attend the use of taxicabs from the stations to the hotels. The court is of the

opinion that that part of the business is not to be regarded as a public utility. It is true that all business, and, for the matter of that, every life in all its details, has a public aspect, some bearing upon the welfare of the country in which it is passed." The court held that by virtue of the fact that said company did not hold itself out to serve any and all persons, it was not a public utility and was not subject to the jurisdiction of the public utility commission.

Upon the facts adduced during the trial of the cause, and for the foregoing reasons, the Attorney-General recommends that the sentence of the lower court be revoked and that the appellant be absolved from all liability under the complaint.

Section 14 of Act No. 2307, as amended by section 9 of Act No. 2694, provides that: "The Public Utility Commission or Commissioners shall have general supervision and regulation of, jurisdiction and control over, all public utilities. * * * The term public utility is hereby defined to include every individual, copartnership, association, corporation or joint stock company, etc., etc., that now or hereafter may own, operate, manage, or control any common carrier, railroad, street railway, etc., engaged in the transportation of passengers, cargo, etc., etc., for public use."

Under the provisions of said section, two things are necessary: (a) The individual, copartnership, etc., etc., must be a public utility; and (b) the business in which such individual, copartnership, etc., etc., is engaged must be for public use. So long as the individual or copartnership, etc., etc., is engaged in a purely private enterprise, without attempting to render service to all who may apply, he can in no sense be considered a public utility, for public use.

"Public use" means the same as "use by the public." The essential feature of the public use is that it is not confined to privileged individuals, but is open to the indefinite public. It is this indefinite or unrestricted quality that gives it its public character. In determining whether a use is public, we must look not only to the character of the business to be done, but also to the proposed mode of doing it. If the use is merely optional with the owners, or the public benefit is merely incidental, it is not a public use, authorizing the exercise of the jurisdiction of the public utility commission. There must be, in general, a right which the law compels the owner to give to the general public. It is not enough that the general prosperity of the public is promoted. Public use is not synonymous with public interest. The true criterion by which to judge of the character of the use is whether the public may enjoy it by right or only by permission.

For all of the foregoing reasons, we agree with the Attorney-General that the appellant was not operating a public utility, for public use, and was not, therefore, subject to the jurisdiction of the Public Utility Commission.

Therefore, the sentence of the lower court is hereby revoked, and it is hereby ordered and decreed that the complaint be dismissed and that the defendant be absolved from all liability under the same, and that he be discharged from the custody of the law, without any finding as to costs. So ordered.

Arellano, C. J., Torres, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

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