

SMITH, BELL & COMPANY (LTD.), PETITIONER, VS. JOAQUIN NATIVIDAD, COLLECTOR OF CUSTOMS OF THE PORT OF CEBU, RESPONDENT.*G.R. No. 15574. September 17, 1919*

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-15574/>**MALCOLM, J.:**

A writ of mandamus is prayed for by Smith, Bell & Co. (Ltd.), against Joaquin Natividad, Collector of Customs of the port of Cebu, Philippine Islands, to compel him to issue a certificate of Philippine registry to the petitioner for its motor vessel Bato. The Attorney-General, acting as counsel for respondent, demurs to the petition on the general ground that it does not state facts sufficient to constitute a cause of action. While the facts are thus admitted, and while, moreover, the pertinent provisions of law are clear and understandable, and interpretative American jurisprudence is found in abundance, yet the issue submitted, is not lightly to be resolved. The question, flatly presented, is, whether Act No. 2761 of the Philippine Legislature is valid—or, more directly stated, whether the Government of the Philippine Islands, through its Legislature, can deny the registry of vessels in its coastwise trade to corporations having alien stockholders.

FACTS.

Smith, Bell & Co., (Ltd.), is a corporation organized and existing under the laws of the Philippine Islands. A majority of its stockholders are British subjects. It is the owner of a motor vessel known as the Bato built for it in the Philippine Islands in 1916, of more than fifteen tons gross. The Bato was brought to Cebu in the present year for the purpose of transporting plaintiff's merchandise between ports in the Islands. Application was made at Cebu, the home port of the vessel, to the Collector of Customs for a certificate of Philippine registry. The Collector refused to issue the certificate, giving as his reason that all the stockholders of Smith, Bell & Co., Ltd., were not citizens either of the United States or of the Philippine Islands. The instant action is the result.

LAW.

The Act of Congress of April 29, 1908, repealing the Shipping Act of April 30, 1906, but reenacting a portion of section 3 of this Law, and still in force, provides in its section 1:

"That until Congress shall have authorized the registry as vessels of the United States of vessels owned in the Philippine Islands, the Government of the Philippine Islands is hereby authorized to adopt, from time to time, and enforce regulations governing the transportation of merchandise and passengers between ports or places in the Philippine Archipelago." (35 Stat. at L., 70; Section 3912, U. S. Comp. Stat. [1916]; 7 Pub. Laws, 364.)

The Act of Congress of August 29, 1916, commonly known as the Jones Law, still in force, provides in sections 3, (first paragraph, first sentence), 6, 7, 8, 10, and 31, as follows:

"Sec. 3. That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." * * *

"Sec. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered,

amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by Act of Congress of the United States.

"Sec. 7. That the legislative authority herein provided shall have power, when not inconsistent with this Act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this Act as it may from time to time see fit.

"This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines.

"Sec. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine Legislature, authorized by this Act."

"Sec. 10. That while this Act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States: Provided, That tariff acts or acts amendatory to the tariff of the Philippine Islands shall not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine Legislature affecting immigration or the currency or coinage laws of the Philippines become a law until it has been approved by the President of the United States; Provided further, That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved."

"Sec. 31. That all laws or parts of laws applicable to the Philippines not in conflict with any of the provisions of this Act are hereby continued in force and effect' (39 Stat. at L., 546.)

On February 23, 1918, the Philippine Legislature enacted Act No. 2761. The first section of this law amended section 1172 of the Administrative Code to read as follows:

"Sec. 1172. Certificate of Philippine register.—Upon registration of a vessel of domestic ownership, and of more than fifteen tons gross, a certificate of Philippine register shall be issued for it. If the vessel is of domestic ownership and of fifteen tons gross or less, the taking of the certificate of Philippine register shall be optional with the owner.

" 'Domestic ownership,' as used in this section, means ownership vested in some one or more of the following classes of persons: (a) Citizens or native inhabitants of the Philippine Islands; (b) citizens of the United States residing in the Philippine Islands; (c) any corporation or company composed wholly of citizens of the Philippine Islands or of the United States or of both, created under the laws of the United States, or of any State thereof, or of the Philippine Islands, provided! some duly authorized officer thereof, or the managing agent or master of the vessel resides in the Philippine Islands.

"Any vessel of more than fifteen gross tons which on February eighth, nineteen hundred and eighteen, had a certificate of Philippine register under existing law, shall likewise be deemed a vessel of domestic ownership so long as there shall not be any change in the ownership thereof nor any transfer of stock of the companies or corporations owning such vessel to persons not included under the last preceding paragraph."

Sections 2 and 3 of Act No. 2761 amended sections 1176 and 1202 of the Administrative Code to read as follows:

"Sec. 1176. Investigation into character of vessel.—No application for a certificate of Philippine register shall be approved until the collector of customs is satisfied from an inspection of the vessel that it is engaged or destined to be engaged in legitimate trade and that it is of domestic ownership as such ownership is defined in section eleven hundred and seventy-two of this Code.

"The collector of customs may at any time inspect a vessel or examine its owner, master, crew, or passengers

in order to ascertain whether the vessel is engaged in legitimate trade and is entitled to have or retain the certificate of Philippine register "

"Sec. 1202. Limiting number of foreign officers and engineers on board vessels.—No Philippine vessel operating in the coastwise trade or on the high seas shall be permitted to have on board more than one master or one mate and one engineer who are not citizens of the United States or of the Philippine Islands, even if they hold licenses under section one thousand one hundred and ninety-nine hereof. No other person who is not a citizen of the United States or of the Philippine Islands shall be an officer or a member of the crew of such vessel. Any such vessel which fails to comply with the terms of this section shall be required to pay an additional tonnage tax of fifty centavos per net ton per month during the continuance of said failure."

ISSUES.

Predicated on these facts and provisions of law, the issues as above stated recur, namely, whether Act No. 2761 of the Philippine Legislature is valid in whole or in part— whether the Government of the Philippine Islands, through its Legislature, can deny the registry of vessel in its coastwise trade to corporations having alien stockholders.

OPINION.

- Considered, from a positive standpoint, there can exist no measure of doubt as to the power of the Philippine Legislature to enact Act No. 2761. The Act of Congress of April 29, 1908, with its specific delegation of authority to the Government of the Philippine Islands to regulate the transportation of merchandise and passengers between ports or places therein, the liberal construction given to the provisions of the Philippine Bill, the Act of Congress of July 1, 1902, by the courts, and the grant by the Act of Congress of August 29, 1916, of general legislative power to the Philippine Legislature, are certainly superabundant authority for such a law. While the Act of the local legislature may in a way be inconsistent with the Act of Congress regulating the coasting trade of the Continental United States, yet the general rule that only such laws of the United States have force in the Philippines as are expressly extended thereto, and the abnegation of power by Congress in favor of the Philippine Islands would leave no starting point for convincing argument. As a matter of fact, counsel for petitioner does not assail legislative action from this direction. (See *U. S. vs. Bull* [1910], 15 Phil., 7; *Sinnot vs. Davenport* [1859] 22 How., 227.)

- It is from the negative, prohibitory standpoint that counsel argues against the constitutionality of Act No. 2761. The first paragraph of the Philippine Bill of Rights of the Philippine Bill, repeated again in the first paragraph of the Philippine Bill of Rights as set forth in the Jones Law, provides "That no law shall be enacted in said Islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws." Counsel says that Act No. 2761 denies to Smith, Bell & Co., Ltd.; the equal protection of the laws because it, in effect, prohibits the corporation from owning vessels, and because classification of corporations based, on the citizenship of one or more of their stockholders is capricious, and that Act No. 2761 deprives the corporation of its property without due process of law because by the passage of the law the company was automatically deprived of every beneficial attribute of ownership in the Bato and left with the naked title to a boat it could not use.

The guaranties extended by the Congress of the United States to the Philippine Islands have been used in the same sense as like provisions found in the United States Constitution, While the "due process of law and equal protection of the laws" clause of the Philippine Bill of Rights is couched in slightly different words than the corresponding clause of the Fourteenth Amendment to the United States Constitution, the first should be interpreted and given the same force and effect as the latter. (*Eepner vs. U. S.* [1904], 195 U. S., 100; *Serra vs. Mortiga* [1907], 204 U. S., 470; *U. S. vs. Bull* [1910], 15 Phil., 7.) The meaning of the Fourteenth Amendment has been announced in classic decisions of the United States Supreme Court. Even at the expense of restating what is so well known, these basic principles must again be set down in order to serve as the basis of this decision.

The guaranties of the Fourteenth Amendment and so of the first paragraph of the Philippine Bill of Rights, are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, color, or nationality. The word "person" includes aliens. (*Yick Wo -vs. Hopkins* [1886], 118 U. S., 356; *Truax vs. Raich* [1915], 239 U. S., 33.) Private corporations, likewise, are "persons" within the scope of the guaranties in so far as their property is concerned. (*Santa Clara County vs. Southern Pac. R. R. Co.* [1886], 118 U. S., 394; *Pembina Mining Co. vs. Pennsylvania* [1888], 125 U. S., 181; *Covington & L. Turnpike Road Co. vs. Sandford* [1896], 164 U. S., 578.) Classification with the end in view of providing diversity of treatment may be made among corporations, but must be based upon some reasonable ground and not be a mere arbitrary selection. (*Gulf, Colorado & Santa Fe Railway Co. vs. Ellis* [1897], 165 U. S., 150.) Examples of laws held unconstitutional because of unlawful discrimination against aliens could be cited. Generally, these decisions relate to statutes which had attempted arbitrarily to forbid aliens to engage in ordinary kinds of business to earn their living. (*State vs. Montgomery* [1900], 94 Maine, 192, peddling—but see *Commonwealth vs. Hana* [1907], 195 Mass., 262; *Templar vs. Board of Examiners of Barbers* [1902], 131 Mich., 254, barbers; *Yick Wo vs. Hopkins* [1886], 118 U. S., 356, discrimination against Chinese; *Truax vs. Raich* [1915], 239 U. S., 33; *In re Parrott* [1880], 1 Fed., 481; *Fraser vs. McConway & Torley Co.* [1897], 82 Fed., 257; *Juniata Limestone Co. vs. Fagley* [1898], 187 Penn., 193, all relating to the employment of aliens by private corporations.)

A literal application of general principles to the facts before us would, of course, cause the inevitable deduction that Act No. 2761 is unconstitutional by reason of its denial to a corporation, some of whose members are foreigners, of the equal protection of the laws. Like all beneficent propositions, deeper research discloses provisos. Examples of a denial of rights to aliens notwithstanding the provisions of the Fourteenth Amendment could be cited. (*Tragesser vs. Gray* [1890], 73 Md., 250, licenses to sell spirituous liquors denied to persons not citizens of the United States; *Commonwealth vs. Hana* [1907], 195 Mass., 262, excluding aliens from the right to peddle; *Patsone vs. Commonwealth of Pennsylvania* [1914], 232 U. S., 138, prohibiting the killing of any wild bird or animal by any unnaturalized foreign-born resident; *Ex parte Gilletti* [1915], 70 Fla., 442, discriminating in favor of citizens with reference to the taking for private use of the common property in fish and oysters found in the public waters of the State; *Heim vs. McCall* [1915], 239 U. S., 175, and *Crane vs. New York* [1915], 239 U. S., 195, limiting employment on public works by, or for, the State or a municipality to citizens of the United States.)

One of the exceptions to the general rule, most persistent and far reaching in influence is, that neither the Fourteenth Amendment to the United States Constitution, broad and comprehensive as it is, nor any other amendment, "was designed to interfere with the power of the State, sometimes termed its 'police power,' to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and to legislate so as to increase the industries of the State, develop its resources and add to its wealth and prosperity. From the very necessities of society, legislation of a special character, having these objects in view, must often be had in certain districts." (*Barbier vs. Connolly* [1884], 113 U. S., 27; *New Orleans Gas Co. vs. Louisiana Light Co.* [1885], 115 U. S., 650.) This is the same police power which the United States Supreme Court says "extends to so dealing with the conditions which exist in the state as to bring out of them the greatest welfare of its people." (*Bacon vs. Walker* [1907], 204 U. S., 311.) For quite similar reasons, none of the provisions of the Philippine Organic Law could have had the effect of denying to the Government of the Philippine Islands, acting through its Legislature, the right to exercise that most essential, insistent, and illimitable of powers, the sovereign police power, in the promotion of the general welfare and the public interest. (*U. S. vs. Toribio* [1910], 15 Phil., 85; *Churchill and Tait vs. Rafferty* [1915], 32 Phil., 580; *Rubi vs. Provincial Board of Mindoro* [1919], 39 Phil., 660-> Another notable exception permits of the regulation or distribution of the public domain or the common property or resources of the people of the State, so that the use may be limited to its citizens. (*Ex Parte Gilletti*

[1915], 70 Fla., 442; *McCready vs. Virginia* [1876], 94 U. S., 391; *Patsone vs. Commonwealth of Pennsylvania* [1914], 232 U. S., 138.) Still another exception permits of the limitation of employment in the construction of public works by, or for, the State or a municipality to 'citizens of the United States or of the State. (*Atkin vs. Kansas* [1903], 191 U. S., 207; *Heim vs. McCall* [1915], 239 U. S., 175; *Crane vs. New York* [1915], 239 U. S., 195.) Even as to classification, it is admitted that a State may classify with reference to the evil to be prevented; the question is a practical one, dependent upon experience. (*Patsone vs. Commonwealth of Pennsylvania* [1914], 232 U. S., 138.)

To justify that portion of Act No. .2761 which permits corporations or companies to obtain a certificate of Philippine registry only on condition that they be composed wholly of citizens of the Philippine Islands or of the United States or both, as not infringing Philippine Organic Law, it must be done under some one of the exceptions here mentioned. This must be done, moreover, having particularly in mind what is so often of controlling effect in this jurisdiction—our local experience and our peculiar local conditions.

To recall a few facts in geography, within the confines of Philippine jurisdictional limits are found more than three thousand islands. Literally, and absolutely, steamship lines are, for an Insular territory thus situated, the arteries of commerce. If one be severed, the life-blood of the nation is lost. If on the other hand these arteries are protected, then the security of the country and the promotion of the general welfare is sustained. Time and again, with such conditions confronting it, has the executive branch of the Government of the Philippine Islands, always later with the sanction of the judicial branch, taken a firm stand with reference to the presence of undesirable foreigners. The Government has thus assumed to act for the all-sufficient and primitive reason of the benefit and protection of its own citizens and of the self-preservation and integrity of its dominion. (In *re Patterson* [1902], 1 Phil., 93; *Forbes vs. Chuoco, Tiaco and Crossfield* [1910], 16 Phil., 534; 228 U. S., 649; In *re McCulloch Dick* [1918], 38 Phil., 41.) Boats owned by foreigners, particularly by such solid and reputable firms as the instant claimant, might indeed traverse the waters of the Philippines for ages without doing any particular harm. Again, some evil-minded foreigner might very easily take advantage of such lavish hospitality to chart Philippine waters, to obtain valuable information for unfriendly foreign powers, to stir up insurrection, or to prejudice Filipino or American commerce. Moreover, under the Spanish portion of Philippine law, the waters within the domestic jurisdiction are deemed part of the national domain, open to public use. (Book II, Tit. IV, Ch. I, Civil Code; Spanish Law of Waters of August 3, 1866, arts. 1, 2, 3.) Common carriers which in the Philippines as in the United States and other countries are, as Lord Hale said, "affected with a public interest," can only be permitted to use these public waters as a privilege and under such conditions as to the representatives of the people may seem wise. (See *De Villata vs. Stanley* [1915], 32 Phil, 541.)

In *Patsone vs. Commonwealth of Pennsylvania* ([1913], 252 U. S., 138), a case hereinbefore mentioned, Justice Holmes delivering the opinion of the United States Supreme Court said:

"This statute makes it unlawful for any unnaturalized foreign-born resident to kill any wild bird or animal except in defense of person or property, and 'to that end' makes it unlawful for such foreign-born person to own or be possessed of a shotgun or rifle; with a penalty of \$25 and a forfeiture of the gun or guns. The plaintiff in error was found guilty and was sentenced to pay the abovementioned fine. The judgment was affirmed on successive appeals. (231 Pa., 46; 79 Atl., 928.) He brings the case to this court on the ground that the statute is contrary to the 14th Amendment and also is in contravention of the treaty between the United States and Italy, to which latter country the plaintiff in error belongs.

"Under the 14th Amendment the objection is twofold; unjustifiably depriving the alien of property, and discrimination against such aliens as a class. But the former really depends upon the latter, since it hardly can be disputed that if the lawful object, the protection of wild life (*Geer vs. Connecticut*, 161 U. S., 519; 40 L. ed., 793; 16 Sup. Ct. Rep., 600), warrants the discrimination, the means adopted for making it effective also might

be adopted. * * *

"The discrimination undoubtedly presents a more difficult question. But we start with the general consideration that a state may classify with reference to the evil to be prevented, and that if the class discriminated against is or reasonably might be considered to define those from whom the evil mainly is to be feared, it properly may be picked out. A lack of abstract symmetry does not matter. The question is a practical one, dependent upon experience. * * *

"The question therefore narrows itself to whether this court can say that the legislature of Pennsylvania was not warranted in assuming as its premise for the law that resident unnaturalized aliens were the peculiar source of the evil that it desired to prevent. (Barrett vs. Indiana, 229 TJ. S., 26, 29; 57 L. ed., 1050, 1052; 33 Sup. Ct. Rep., 692.)

"Obviously the question, so stated, is one of local experience, on which this court ought to be very slow to declare that the state legislature was wrong in its facts. (Adams vs. Milwaukee, 228 U. S., 572, 583; 57 L. ed., 971, 977; 33 Sup. Ct. Rep., 610.) If we might trust popular speech in some states it was right; but it is enough that this court has no such knowledge of local conditions as to be able to say that it was manifestly wrong. * *

"Judgment affirmed."

We are inclined to the view that while Smith, Bell & Co. Ltd., a corporation having alien stockholders, is entitled to the protection afforded by the due process of law and equal protection of the laws clause of the Philippine Bill of Rights, nevertheless, Act No. 2761 of the Philippine Legislature, in denying to corporations such as Smith, Bell & Co. Ltd., the right to register vessels in the Philippines coastwise trade, does not belong to that vicious species of class legislation which must always be condemned, but, does fall within authorized exceptions, notably, within the purview of the police power, and so does not offend against the constitutional provision.

This opinion might well be brought to a close at this point. It occurs to us, however, that the legislative history of the United States and the Philippine Islands, and, probably, the legislative history of other countries, if we were to take the time to search it out, might disclose similar attempts at restriction on the right to enter the coastwise trade, and might thus furnish valuable aid by which to ascertain and, if possible, effectuate legislative intention.

- The power to regulate commerce, expressly delegated to the Congress by the Constitution, includes the power to nationalize ships built and owned in the United States by registries and enrollments, and the recording of the muniments of title of American vessels. The Congress "may encourage or it may entirely prohibit such commerce, and it may regulate in any way it may see fit between these two extremes." (U. S. vs. Craig [1886], 28 Fed., 795; Gibbons vs. Ogden [1824], 9 Wheat., 1; The Passenger Cases [1849], 7 How., 283.)

Acting within the purview of such power, the first Congress of the United States had not been long convened before it enacted on September 1, 1789, "An Act for Registering and Clearing Vessels, Regulating the Coasting Trade, and for other purposes." Section 1 of this law provided that for any ship or vessel to obtain the benefits of American registry, it must belong wholly to a citizen or citizens of the United States "and no other." (1 Stat. at L., 55.) That Act was shortly after repealed, but the same idea was carried into the Acts of Congress of December 31, 1792 and February 18, 1793. (1 Stat. at L., 287, 305.) Section 4 of the Act of 1792 provided that in order to obtain the registry of any vessel, an oath shall be taken and subscribed by the owner, or by one of the owners thereof, before the officer authorized to make such registry, declaring, "that there is no subject or citizen of any foreign prince or state, directly or indirectly, by way of trust, confidence, or otherwise, interested in such vessel, or in the profits or issues thereof." Section 32 of the Act of 1793 even went so far as to say "that if any licensed ship or vessel shall be transferred to any person who is not at the time of such transfer a citizen of and resident within the United States, * * * every such vessel with her tackle, apparel, and furniture, and the cargo found on board her,

shall be forfeited." In case of alienation to a foreigner, Chief Justice Marshall said that all the privileges of an American bottom were ipso facto forfeited. (U. S. vs. Willings and Francis [1807], 4 Cranch, 48.) Even as late as 1873, the Attorney-General of the United States was of the opinion that under the provisions of the Act of December 31, 1792, no vessel in which a foreigner is directly or indirectly interested can lawfully be registered as a vessel of the United States. (14 Op. Atty.-Gen. [U. S.], 340.)

These laws continued in force without contest, although possibly the Act of March 3, 1825, may have affected them, until amended by the Act of May 28, 1896 (29 Stat. at L., 188) which extended the privileges of registry from vessels wholly owned by a citizen or citizens of the United States to corporations created under the laws of any of the states thereof. The law, as amended, made possible the deduction that a vessel belonging to a domestic corporation was entitled to registry or enrollment even though some stock of the company be owned by aliens. The right of ownership of stock in a corporation was thereafter distinct from the right to hold the property by the corporation. (Humphreys vs. McKissock [1890], 140 U. S., 304; Queen vs. Arnaud [1846], 9 Q. B., 806; 29 Op. Atty.-Gen. [U. S.], 188.)

On American occupation of the Philippines, the new government found a substantive law in operation in the Islands with a civil law history which it wisely continued in force. Article fifteen of the Spanish Code of Commerce permitted any foreigner to engage in Philippine trade if he had legal capacity to do so under the laws of his nation. When the Philippine Commission came to enact the Customs Administrative Act (No. 355) in 1902, it returned to the old American policy of limiting the protection and flag of the United States to vessels owned by citizens of the United States or by native inhabitants of the Philippine Islands. (Sec. 117.) Two years later, the same body reverted to the existing Congressional law by permitting certificates to be issued to a citizen of the United States or to a corporation or company created under the laws of the United States or of any state thereof or of the Philippine Islands. (Act No. 1235, sec. 3.) The two administrative codes repeated the same provision with the necessary amplification of inclusion of citizens or native inhabitants of the Philippine Islands (Adm. Code of 1916, sec. 1345; Adm. Code of 1917, sec. 1172). And now Act No. 2761 has returned to the restrictive idea of the original Customs Administrative Act which in turn was merely a reflection of the statutory language of the first American Congress.

Provisions such as those in Act No. 2761, which deny to foreigners the right to a certificate of Philippine registry, are thus found not to be as radical as a first reading would make them appear.

Without any subterfuge, the apparent purpose of the Philippine Legislature is seen to be to enact an anti-alien shipping act. The ultimate purpose of the Legislature is to encourage Philippine ship-building. This, without doubt, has, likewise, been the intention of the United States Congress in passing navigation or tariff laws on different occasions. The object of such a law, the United States Supreme Court once said, was to encourage American trade, navigation, and ship-building by giving American ship-owners exclusive privileges. (Old Dominion Steamship Co. vs. Virginia [1905], 198 U. S., 299; Kent's Commentaries, Vol. 3, p. 139.)

In the concurring opinion of Justice Johnson in *Gibbons vs. Ogden* ([1824], 9 Wheat., 1) is found the following:

"Licensing acts, in fact, in legislation, are universally restraining acts; as, for example, acts licensing gaming house®, retailers of spirituous liquors, etc. The act, in this instance, is distinctly of that character, and forms part of an extensive system, the object of which is to encourage American shipping, and place them on an equal footing with the shipping of other nations. Almost every commercial nation reserves to its own subjects a monopoly of its coasting trade; and a countervailing privilege in favor of American shipping is contemplated, in the whole legislation of the United States on this subject. It is not to give the vessel an American character, that the license is granted; that effect has been correctly attributed to the act of her enrollment. But it is to confer on her American privileges, as contradistinguished from foreign; and to preserve the Government from

fraud by foreigners, in surreptitiously intruding themselves into the American commercial marine, as well as frauds upon the revenue in the trade coastwise, that this whole system is projected."

The United States Congress in assuming its grave responsibility of legislating wisely for a new country did so imbued with a spirit of Americanism. Domestic navigation and trade, it decreed, could only be carried on by citizens of the United States. If the representatives of the American people acted in this patriotic manner to advance the national policy, and if their action was accepted without protest in the courts, who can say that they did not enact such beneficial laws under the all-pervading police power, with the prime motive of safeguarding the country and of promoting its prosperity? Quite similarly, the Philippine Legislature made up entirely of Filipinos, representing the mandate of the Filipino people and the guardian of their rights, acting under practically autonomous powers, and imbued with a strong sense of Philippinism, has desired for these Islands safety from foreign interlopers, the use of the common property exclusively by its citizens and the citizens of the United States, and protection for the common good of the people. Who can say, therefore, especially can a court, that with all the facts and circumstances affecting the Filipino people before it, the Philippine Legislature has erred in the enactment of Act No. 2761?

Surely, the members of the judiciary are not expected to live apart from active life, in monastic seclusion amidst dusty tomes and ancient records, but, as keen spectators of passing events and alive to the dictates of the general—the national—welfare, can incline the scales of their decisions in favor of that solution which will most effectively promote the public policy. All the presumption is in favor of the constitutionality of the law and without good and strong reasons, courts should not attempt to nullify the action of the Legislature. "In construing a statute enacted by the Philippine Commission (Legislature), we deem it our duty not to give it a construction which would be repugnant to an Act of Congress, if the language of the statute is fairly susceptible of another construction not in conflict with the higher law." (In re Guarina [1913], 24 Phil., 36; U. S. vs. Ten Yu [1912], 24 Phil., 1.) That is the true construction which will best carry legislative intention into effect.

With full consciousness of the importance of the question, we nevertheless are clearly of the opinion that the limitation of domestic ownership for purposes of obtaining a certificate of Philippine registry in the coastwise trade to citizens of the Philippine Islands, and to citizens of the United States, does not violate the provisions of paragraph 1 of section 3 of the Act of Congress of August 29, 1916. No treaty right is relied upon. Act No. 2761 of the Philippine Legislature is held valid and constitutional.

The petition for a writ of mandamus is denied, with costs against the petitioner. So ordered.

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

Writ denied.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.