

PHILIPPINE MANUFACTURING COMPANY AND RIZAL REFINING COMPANY, PETITIONERS, VS. BOARD OF PUBLIC UTILITY COMMISSIONERS, AS CREATED BY SECTION 19 OF ACT NO. 2694, MANILA OIL REFININ...

G.R. No. 15744. October 20, 1919

Ponente: STREET, J.

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STREET, J.:

This is an original proceeding in the Supreme Court in the nature of an application for a writ of certiorari instituted pursuant to the provisions of section 20 of Act No. 2694 for the purpose of superseding and annulling an order promulgated on August 19, 1919, by the Honorable Mariano Cui, as Public Utility Commissioner, relative to the distribution of electrical energy by the Manila Electric Railroad and Light Company among the factories engaged in the production of coconut oil in the city of Manila. The facts are sufficiently stated in the course of the opinion.

It is well-known that owing to conditions created by the European War the production of coconut oil has of late years been notably stimulated in the Philippine Islands, and especially in the city of Manila where more than a score of factories devoted to the manufacture of this product have lately sprung up. Practically all of these new plants are dependent for their power upon the generating plant of the Manila Electric Railroad and Light Company (hereinafter referred to as the Electric Company). The oil factories have from time to time signed contracts with the Electric Company for the quantity of energy respectively required by them, the oldest of the contracts to which attention has been drawn in this proceeding being that of Carrero, Vidal & Company, calling for a supply of 64 kilowatts and dated January 1, 1917. The same firm has two other contracts of later date, namely, one of April 1918, calling for 100 kilowatts, and a third of August, 1918, calling for 158 kilowatts. Other factories have pursued a similar policy of contracting for additional power as the capacities of their plants have expanded, with the result that at the time of the origin of this controversy the Electric Company had on its books about sixty different contracts with these companies, bearing dates from the early part of the year 1917 to March of 1919, the combined demands of which amounted to about 1,500 kilowatts daily.

On May 23, 1919, a strike occurred in the power plant of the Electric Company, and as the plant was already taxed practically to the limit of its capacity, it became impossible for the company to supply all the demands for electric power. As the supplying of current for the lighting service and propulsion of street cars throughout the city was considered of a peremptory nature, the Electric Company proceeded on May 24 to disconnect some of the oil plants and service to them was thereby suspended. On May 31, 1919, the situation was made still worse by a break-down in the company's plant of a turbine moving a 2,500-kilowatt generator. The trouble caused by the strike was not of lengthy duration, but the damaged turbine had not, so far as appears, been restored to service when this cause was heard, notwithstanding the efforts to that end put forth by the Electric Company.

In view of the conditions above-described the Electric Company found that, after supplying the electricity

required for lights, street-cars, and the miscellaneous needs of many small industrial consumers throughout the city, there remained available for oil factories about 25 per cent of the total electrical power called for in their various contracts.

In this situation the Company determined to supply power to its customers in the order of the priority of their respective contracts. Acting upon this principle it was possible to supply about seven factories with energy during "off-peak" hours.

As this method of distribution resulted in depriving the factories having contracts of later date of all power whatever, there was a natural disposition on the part of those thus adversely affected to question the propriety of the method of distribution adopted by the Electric Company; and the result was that on July 1, 1919, the Manila Oil Refining and By-Products Company appeared before the Public Utility Commission in the city of Manila and made a complaint against the Electric Company on the ground that it was making an unlawful preference in favor of those oil factories to which it was delivering electric energy, and praying in effect that said company be ordered to reconnect its power plant with the petitioner's factory and to continue to supply it with not less than 150 horse-power of energy as provided in the petitioner's contract.

The Electric Company filed an answer before the Commissioner, Honorable Mariano Cui, on July 5, 1919, wherein it set forth the causes of its inability to supply the requisite power for all its customers and stated that its method of distributing its available power, i. e., preferring those customers having the older contracts, was in its opinion the most equitable way of distributing the current, as its division pro rata among all the users would give too little to each to be of any benefit. It was added, however, that the company was willing to make the distribution in any manner which the Commission should decide to be fair. The respondent company further suggested that the matter be set for immediate hearing, upon notice to all the oil companies who received current from it and that after such hearing, the commission should determine the method to be used in distributing the current available for industrial uses.

The course thus suggested was followed, and the parties interested were notified that a hearing would be granted at 3 p. m. on July 18, 1919. Upon that occasion a number of lawyers and representatives of the oil factories, as well as representatives of the Electric Company, appeared before the Commissioner and a conference was held. In the course of the discussion that followed the Commissioner informed those present that they had not been cited especially for the purpose of submitting any proof touching the controversy then under consideration but in order that he might have the benefit of their opinions and hear any suggestions they might wish to submit with reference to the method that should be followed by the Electric Company in the distribution of its available power.

In the end it became apparent that two opposing opinions were held, one favoring the method already adopted by the Electric Company as the only reasonable and practicable course that could be pursued, the other insisting upon a distribution to be made to all the consumers alike upon a basis proportional to what each had been receiving prior to the failure of power. As will readily be supposed the alignment of the individuals sustaining these respective opinions was in the main in accordance with the apparent interest of the companies represented by them, as determined by the sequence in the dates of their contracts; though it must be said that more than one of the conferees expressed their conformity in the plan already adopted, although the contracts of the companies represented by them were much too far down in the list for them to participate in the power to be distributed under that plan.

The discussion, as appears from the transcription of the stenographic notes, was not very fruitful; and in the end the commission invited the conferees severally to submit memoranda upon the matter and the meeting adjourned.

On August 19, 1919, the Commissioner promulgated his decision, which in effect practically sustained the

complaint of the Manila Oil Refining and By-Products Company and declared that the method that had been pursued by the Electric Company in distributing its available power was illegal. To remedy this the Commissioner ordered that the company should discontinue said method and should thereafter proceed, so long as the existing exigency continued, to supply current to all of the oil factories with which it had contracts, giving to each a quantity of power proportional to the amounts received by it prior to the shortage. It was further ordered that two turns should, be established of nine hours each, so that some of the factories could run from 8 o'clock in the morning until five in the afternoon and others from 10 o'clock at night until seven in the morning.

Upon the promulgation of this order the Rizal Refining Company, one of the companies which had been receiving power from the Electric Company by virtue of the priority of its contract, appeared before the Commissioner on August 20, 1919, and moved for a rehearing. In this motion the Philippine Manufacturing Company joined, being substantially in the same position as the Rizal Refining Company. The Commissioner thereupon set the cause for rehearing before the Board created by section 19 of Act No. 2694, consisting of (1) the Attorney-General, or any person of his office whom he may designate, (2) the Director of Public Works, and (3) the Public Utility Commissioner. Upon consideration of this petition, the same was upon August 22, 1919, overruled by the board.

The Philippine Manufacturing Company and the Rizal Refining Company, considering themselves aggrieved by the order in question, and having failed to obtain relief from the board, thereupon had recourse to the Supreme Court in a petition in the nature of an application for a writ of certiorari, pursuant to the provisions of section 20 of Act No. 2694, amendatory of section 27 of Act No. 2307, which in the part here material to be stated is as follows:

"Every order made by the board * * * may be reviewed on the application of any person or public utility affected thereby, by certiorari in appropriate cases, or by petition, to the Supreme Court, within thirty days from the date upon which such order becomes effective, as herein provided; said petition shall be filed with the clerk of the Supreme Court and a copy thereof served upon the parties interested and the secretary of the Board either personally or by leaving same at the office of said Board in the city of Manila. 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."

Said petition was filed in this court on August 26, 1919, the parties named as respondents being the board created by section 19 of Act No. 2694, the Manila Oil Refining and By-Products Company, and the Manila Electric Railroad and Light Company. Though the question of nomenclature is not particularly important we observe in passing that the board created by section 19 of Act No. 2694 is an innominate board of review and is not properly designated as a Board of Public Utility Commissioners. It is not designated as a Board of Public Utility Commissioners in Act No. 2694 but is there referred to merely as a board. There was formerly in existence under our laws a Board of Public Utility Commissioners, created by Act No. 2307, but this institution was abolished by the amendatory Act No. 2694, which substituted in lieu thereof a public Utility Commission, composed of one functionary, the Public Utility Commissioner. The Board created by section 19 of Act No. 2694 is constituted exclusively for the purpose of reviewing petitions to rehear filed by persons supposing themselves aggrieved by the orders of the Public Utility Commissioner.

It is evident from a comparison of sections 19 and 20 of Act No. 2694 that, for purposes of relief in the Supreme Court, the board of review by denying a motion to rehear, in effect makes the order of the Commissioner its own, so that this court, upon such a proceeding as that now before us, has to consider the merits of the case upon the entire record made up of the proceedings before both the Public Utility Commissioner and the Board of review. Upon the filing of the present petition in this court, the respondents were, by order of September 3, 1919, required to answer to the merits and the Board above referred to was directed to send up the record, which was by it duly

certified to this court.

Upon the coming in of the answers of the respondents, the cause was argued by counsel and is now before us for decision. It may here be stated that the petitioners from the first asked this court to grant a temporary supersedeas of the order in question. The court, however, in view of the fact that the cause was one which would, owing to its urgent nature, be determined at an early date, deemed it advisable to let the matter remain temporarily at least in the situation created by the order of the Public Utility Commissioner. The supersedeas was therefore denied, without prejudice to the right of the court of its own motion later to grant a supersedeas pendente lite, if it should see fit to do so.

The first question to be determined has reference to the parties to the proceeding, the point being made in the answer of the Manila Oil Refining and By-Products Company that all of the persons interested in the order complained of have not been made parties to the present proceeding or served with a copy of the petition; and it is an admitted fact that there are twenty or more oil factories interested in one way or other in the order as consumers of electricity, whereas only one such consumer, the Manila Oil Refining and By-Products Company, has been named as a formal respondent in this proceeding.

We think, however, that the parties are sufficient. The Manila Oil Refining and By-Products Company was the original complainant before the Public Utility Commissioner and the complaint was filed by it against the Manila Electric Railroad and Light Company. Those two were the only formal parties to the proceeding before the Commissioner, and we are of the opinion that when those parties were joined with the board of review in the present petition as respondents, there was a sufficient compliance with all legal requirements as to parties. When section 20 of Act No. 2694, in prescribing the steps to be taken upon the filing of a petition of this character in the Supreme Court, says that a copy of the petition shall be served upon "the parties interested," these words must be understood to refer to the parties to the proceeding. It can not be supposed that it was intended to require the clerk of the court to make an independent investigation to inform himself of all the numerous persons who may be interested one way or another in the litigation in order to serve a copy of the petition upon them.

Proceedings of this character have a marked analogy to the "class suit," as known to the practice of the American and English courts of equity, and recognized in section 118 of the Code of Civil Procedure. Indeed the petitioners have proposed by motion to amend their petition in order to show that the proceeding was instituted by them on behalf of themselves and others similarly interested against the respondents and all others who are similarly interested with the Manila Oil Refining and By-Products Company. We have deemed it unnecessary to allow said amendment, as we think the complaint already sufficient in form.

Before this cause was submitted upon argument, the Philippine Oil Factory (Fábrica de Aceites de Filipinas) asked leave to intervene, upon a showing that it is in substantially the same position as the respondent Manila Oil Refining and By-Products Company and equally interested with it in maintaining the Commissioner's order. A similar request was preferred by the Laguna Coconut Oil. In view of the fact that the interest of these parties was already represented in the proceeding, and inasmuch as the admission of numerous intervenors might serve unduly to encumber the proceedings and delay a decision, it was deemed proper to deny these motions to intervene, but leave was granted to the proposed intervenors to submit briefs in the matter in the capacity of amici curiae. It is true that section 118 of the Code of Civil Procedure recognizes the right of any party to intervene in a class suit for the protection of his individual interest. But where, as here, the proposed intervenor has no individual interest adverse to all other litigants, but only an interest in common with others, it is apparent that intervention is not necessary to his protection; and in such case it must be considered discretionary with the court whether the intervention shall be permitted. As will be further seen by a perusal of section 121 of the Code of Civil Procedure the right of intervention is not always an absolute right but one to be exercised subject to proper

judicial discretion. (See *Joaquin vs. Herrera*, 37 Phil. Rep., 705.)

This brings us to the point of considering the validity of the order of the Public Utility Commissioner of August 19, 1919, and the action of the board of review thereon, considered with reference to the facts upon which said order was based. At the beginning of this discussion it is necessary to explain that the list of contracts booked by the Electric Company for the supply of electric energy to the oil factories in Manila are of two sorts. The first consists of the contracts entered into prior to January 18, 1918—nine or ten in number—of which the earlier contracts of the petitioners" are examples. These call for a certain quantity of electricity to be supplied by the Electric Company at the rates stipulated and under the conditions named in Electric Service Rate Schedule No. IV, approved by the Public Utility Commission of the Philippine Islands. In these contracts the customer agrees, on its part, to take and pay for the electricity thus supplied for a fixed minimum period of one or two years, as specified in his particular contract, and thereafter until the contract should be terminated on thirty days written notice from either party. Under such a contract as this the customer appears, so far as the mere terms of the contract are concerned, to be unconditionally entitled to the quantity of electricity contracted for, so long as the conditions incumbent upon him should be complied with and the contract itself should continue in force.

The stipulations of the contracts signed between the Electric Company and its customers bearing date of January 18, 1918, and later, are upon their face substantially the same as those above-described; but upon the date last mentioned the Electric Service Rate Schedule, to which reference is made in the contracts, was amended by authorizing the Electric Company to reduce the minimum contract period, thereafter fixed at one year, in accordance with the following regulation:

"The company's standard form of contract, providing for a minimum contract period of 1 year, must be signed. The Company reserves the right to reduce the minimum contract period of one year, in the event of the Company being unable to furnish the electric service contracted for because of the maximum available electric generating capacity of the Company's power plant for the furnishing of electric service being reached, provided, however, that notice is given by the Company, in writing, 30 days before the Company proposes to reduce the minimum contract period of 1 year."

This regulation was, however, made subject to another provision, the material part of which is as follows;

"Not to apply to existing contracts or their renewal upon termination, provided no additional 'Demand' on the power plant of the Company is involved from that covered by said existing contracts."

In view of the fact that the contract of the Manila Oil Refining and By-Products Company, as well as those of other companies whose contracts were signed subsequently to January 18, 1919, are subject to the regulation above quoted, while the earlier contracts of the petitioners, the Philippine Manufacturing Company and the Rizal Refining Company, are subject to no such qualification, it is insisted in behalf of these latter that they are on a higher plan with respect to the right to receive electrical energy than their competitors having contracts of later date; and in this connection the contracts signed prior to January 18, 1918, are denominated unconditional contracts, while those of later date are said to be conditional.

We are of the opinion, as was the Commissioner, that the distinction thus drawn has no bearing on the solution of the case. It is true that under the amended regulation the Electric Company is given the right under certain conditions to reduce the minimum period of one year stated in the contract and to abrogate it upon thirty days notice. However, it clearly appears that the Electric Company has not elected to avail itself of this provision. The company, though temporarily unable to supply all of its customers owing to the emergency resulting from the breakdown of one of its turbines, evidently expects to repair its plant at an early date and it is quite content to keep all the contracts on its books. Inasmuch as the trouble is due to unavoidable accident, the company is not responsible in damages to any of its customers for failure to deliver the power; and it is therefore in its interest to

let all the contracts remain in force against the time when the power plant will be able to meet all requirements.

It will be noted that under the regulation quoted above the right of reducing the minimum period is in the Electric Company, and it is obvious that a stranger to one of the contracts subject to that regulation cannot be in any wise affected by it, so long as the Electric Company itself takes no action under it.

Upon the whole it is very manifest that while the contracts of the petitioners enjoy simple priority as to the time of their execution—the effect of which will be discussed later —the petitioners cannot claim any preferential right whatever springing from the conditions contemplated in the regulation quoted.

The petitioners allege that the order complained of, in depriving the petitioners of the power to which they believe themselves entitled, has the effect of impairing the obligation of the petitioner's contracts and furthermore of depriving them of property without due process of law. We accede to the view that an order of this character, promulgated by the Public Utility Commissioner, is in legal contemplation a law and if in fact its effect is to impair the obligation of the petitioners' contracts in an illegitimate sense, or to deprive the petitioners of their property without due legal process, it would be necessary to hold said order void as inconsistent with our organic laws.

Nevertheless, we are of the opinion that, if the proceedings before the Commissioner were conducted according to law, and if the order in question is reasonably supported by evidence, there is nothing in the action taken which should be considered obnoxious to either of the constitutional guaranties upon which the petitioners rely. As is now well settled, the Legislature has unquestionable power to regulate the service to be rendered by public utilities or public service corporations; and this power may be delegated by it to such a body as our Public Utility Commission. Any person who makes a contract with a public service corporation must be understood to contract with reference to the existence of this power, and when such power is validly exercised, the contract must, in case of conflict, yield to the regulative authority.

The case of the Union Dry Goods Company vs. Georgia Public Service Corporation (decided by the Supreme Court of the United States on January 7, 1919, 248 U. S., 372), is entirely conclusive on this feature of the case. It there appeared that the Georgia Public Service Corporation and the Union Dry Goods Company, both corporations organized under Georgia Law and doing business in Macon, on July 18, 1912, contracted together in writing for the term of five years, the former to supply electric light and power to the latter, which agreed to pay stipulated rates for the service. The contract was performed for almost two years until in April, 1914, when the Dry Goods Company refused to pay a bill for service rendered during March, in which a rate higher than that of the contract was charged. The Service Corporation claimed that this rate was authorized and required by an order of the Railroad Commission of Georgia, entered after investigation and hearing. Soon thereafter the Dry Goods Company commenced this suit to compel specific performance of its contract, which had three years to run; to enjoin the Service Corporation from charging the higher rate, and from executing a threat to cut it off from a supply of electricity, because of failure to pay the increased rate. The trial court and the Supreme Court of Georgia both held against the claims of the Dry Goods Company and the case was brought for review to the Supreme Court of the United States upon writ of error, where it was held that the* action of the Commission was valid and that the order increasing the rate to be charged for electricity was not obnoxious as impairing the obligation of the plaintiff's contract or as depriving it of property without due process of law.

In discussing these questions the court, speaking through Justice Clarke, said:

"Long prior to the contract of 1912 the Railroad Commission was given jurisdiction over, and power to regulate, the rates of electric light and power companies. * * *

"As we have seen, the rates prescribed by the Commission were declared by it to be reasonable and the Service

Company was given authority to charge them. The plaintiff in error did not assert in its pleadings, or offer evidence tending to prove, that these Commission rates were unreasonable, but complained only that they were higher than the contract rates, and for this reason, it argued, that to give effect to the order, as the state supreme court did, violated the provisions of the Constitution referred to.

"The presumption of law is in favor of the validity of the order, and the plaintiff in error did not deny, as it could not successfully, that capital invested in an electric light and power plant to supply electricity to the inhabitants of a city is devoted to a use which the public has an interest which justifies rate regulation by a state in the exercise of its police power. * * *

"Thus it will be seen that the case of the plaintiff in error is narrowed to the claim that reasonable rates, fixed by a state in an appropriate exercise of its police power, are invalid for the reason that, if given effect, they will supersede the designated in the private contract between the parties to the suit, entered into prior to the making of the order by the Railroad Commission.

"Except for the seriousness with which this claim has been asserted and is now pursued into this court, the law with respect to it would be regarded as so settled as not to merit further discussion.

"That private contract rights must yield to the public welfare, where the latter is appropriately declared and defined and the two conflict, has been often decided by this court."

Continuing, the court quoted the following passage from its prior decisions, as containing propositions no longer subject to dispute.

"One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the state by making a contract about them. The contract will carry with it the infirmity of the subject-matter." (Hudson County Water Company vs. McCarter, 209 U. S., 349; 52 L. ed., 828.)

"Contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to defeat of legitimate government authority." (Legal Tender Cases, 12 Wall., 457, 550; 20 L. ed., 287, 311, 312.)

"There is no absolute freedom to do as one wills or to contract as one chooses. The guaranty of liberty does not withdraw from legislative supervision that wide department of activity which consists of the making of contracts, or deny to government the power to provide the restrictive safeguards. Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community." (Chicago etc. R. Co. vs. McGuire, 219 U.S., 567; 55 L. ed., 338.)

The Public Utility Commission, or its predecessor, the original Board of Public Utility Commissioners, was in existence in the Philippine Islands for a considerable period prior to the date of the earliest contracts with which we are now concerned. Among the powers conferred on said Commission by Act No. 2307, as amended by Act No. 2694, we find the following:

Sec. 15. The Public Utility Commission (or Public Utility Commissioner) shall have the power:

"(e) After hearing, by order in writing, to fix just and reasonable standards, classifications, regulations, practices, measurements, or service to be furnished, imposed, observed, and followed thereafter by any public utility as herein defined.

"Sec. 16. The Public Utility Commission (or Public Utility Commissioner) shall have power, after hearing, upon notice, by order in writing, to require every public utility as herein denned:

"(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.

"Sec. 17. 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 Public Utility Commission (or Public Utility Commissioner)

"(d) Make or give, directly or indirectly, any undue or unreasonable preference or advantage to any person or corporation or to any locality or to any particular description of traffic in any respect whatsoever, or subject any particular person or corporation or locality or any particular description of traffic to any prejudice or advantage in any respect whatsoever."

In the light of these provisions it can not be questioned that the Public Utility Commission, in the person of the Commissioner, is clothed with ample power to promulgate reasonable regulations for the distribution of electrical energy in such an emergency in the power plant of the Electric Company as occurred in the present case. This court would, therefore; have no power to disturb the order complained of on the ground that its promulgation was without the jurisdiction of the Board.

We are clearly of the opinion, however, that the order referred to is subject to legitimate criticism on the ground that there was no evidence before either the Commissioner or the respondent board reasonably to support said order. It appears from the opinion written by the Commissioner, as well as from the proceedings of the conference of July 18, 1919, that in the view of the Commissioner the method adopted by the Electric Company of distributing the available energy, i. e., with reference to the priority in time of the various contracts, was necessarily and per se illegal. Parting from this assumption, the Commissioner concluded that said method should be substituted by the plan of proportional distribution promulgated by him. This idea was acted upon without further hearing and without any proof whatever that the method adopted by the Commissioner was practicable or more reasonable under existing conditions than that adopted by the company. The clear weight of intelligent opinion, as expressed in the conferences held with the representatives of the various interested parties, seems in fact to have been the other way. In particular the advice of Lopez, the technical representative of the Electric Company, and certainly a person in a position to be less biased than any other speaker, was to the effect that a general scheme of proportional distribution, including all the industrial consumers of electricity in the city, was altogether out of the question, because of the impossibility of dividing the current proportionately among so many consumers, many of whom had motors of small capacity. As to any scheme of proportional distribution embracing only the oil factories, he suggested that while it was possible to apportion the energy approximately among these big consumers, the matter was not capable of exact adjustment; and he intimated that the real difficulty was that if the Electric Company attempted to apportion among twenty or more factories the quantity of energy which it was then supplying to seven, there would not be enough to be of much use to any, and the result might be that all the plants would be paralyzed or thrown into disorder.

The assumption of the Commissioner, in the face of these suggestions, and without any proof to the contrary, that the method of distribution pursued by the Electric Company was necessarily, and as a matter of mere law, unreasonably preferential and discriminatory is our opinion untenable. Whether it was so depends upon the particular conditions in existence ;at the time, and a consideration of these conditions involves facts with reference to which the record is inconclusive.

In considering the rights of users of gas, electrical energy, and other products supplied by public service corporations, it is well to bear in mind that there are certain well defined uses which stand upon entirely different planes with respect to each other. It is generally admitted, for instance, that the domestic use of gas, as for

lighting, heating and cooking, enjoys preference over ordinary industrial uses. (Re Pawhuska Oil & Gas Co., P. U. R. [1917D], p. 947.) The propulsion of street cars in cities likewise appears to enjoy a preferential right, arising from the absolute necessity of means of transportation for the public. It may readily be admitted that if a company supplying gas or electricity for domestic use should establish a preference among its customers based upon mere priority of service, or priority of contract, such discrimination might well be considered unreasonable, especially where it is possible to limit the industrial consumption in the same field in order that the domestic consumers may have enough. (Falconer vs. Pennsylvania Gas Company, P. XJ. R. [1918F], p. 787.) A public utility commission in New York, supposedly constituted much like our own, has declared that in times of emergency, or shortage, it would regulate the manner of distribution of gas (Mayor of Batavia vs. Alden-Batavia Natural Gas Company, P. U. R. [1918E], p. 929); and the Ohio Commission has in fact promulgated regulations upon the subject (Natural Gas Service Rules, P. U. R. [1918E], p. 537.) However, we do not find anything in those regulations or elsewhere which actually undertakes to define the principles by which a Commission should be guided when it has to determine the method of distribution among industrial consumers of the same class when there is not enough power to serve all. The question should, we think, be considered with special reference to the facts of each case and in the light of reason and common sense. As already observed the petitioners had in their favor the circumstance of the priority of their contracts, and in the absence of all other criteria for determining the relative rights of the various oil factories, this circumstance might, we think, become the basis of a reasonable preference. It may be admitted that mere priority of time gives rise to an equity of low degree. Nevertheless it is a circumstance which is entitled to consideration, and may be controlling where absolute equality is not practically obtainable and some discrimination or other is necessary. Something can, indeed, be said in favor of such a preference upon grounds of public policy; for the man who first invests his capital in a new enterprise and teaches others how to develop successfully the resources of the country is undoubtedly a public benefactor and entitled to more consideration than one who, following in his footsteps, seeks success in the same direction.

When the first few oil mills dependent upon electrical power were established in this city there was every reasonable prospect that the generating plant of the Electrical Company would be able to supply their needs indefinitely. Their plans were laid and contracts made in the light of this situation, and their expectations for a continued supply of power would have been realized but for the fact that so many competitors came into the field later, taxing the power supply beyond its legitimate capacity. Nothing is of course to be said against these new-comers, as they were entirely within their rights; and competition is the life of trade. Nevertheless, when their contracts with the Electric Company were made the capacity of the latter was steadily approaching its limit. Having contracted in the light of that fact, they can not be considered absolutely on as high a ground as those who were in the field before them. The idea applied by the Commissioner, namely, that there must be a proportional distribution of power among all the oil factories regardless of consequences, is based on a notion of theoretical equality which, though powerfully attractive in this age, must sometimes fail of practical realization. It will not escape notice that the rule established by him, even when considered with reference to industrial consumers alone, is lacking in uniformity,, because the order is confined in its operation exclusively to one class of industrial consumers, namely the oil factories.

Our conclusion on this point, as already indicated, is that the method of distribution upon the basis of priority of contract so far from being illegal per se was prima facie legitimate. It follows that, although the Commissioner may have had the actual power to abrogate that method, he could only do so upon proof that the method to be substituted was practicable and more reasonable than the other. The record will be searched in vain for any such proof. The least that could have been required was a showing that the quantity of electricity to be apportioned under the proposed rule would be sufficient to enable the various factories to utilize it advantageously, or speaking loosely and without any desire to bind the Commission by a hard and fast rule, that the amount

apportioned would reasonably suffice for minimum requirements in the several plants, or particular departments thereof, during the hours of an ordinary working day. If this test could not be met, the method proposed should have been rejected as impracticable.

In making provision for a review in this court of the orders of the Public Utility Commission (or the Board which passes upon applications for a rehearing of its orders) the Legislature has seen fit to confer on us the power to set aside such orders when it clearly appears that there is no evidence to support them. It is, therefore, incumbent on the Commissioner, in litigious matters where he exercises judicial power, to act only upon sufficient evidence and to cause the same to be reduced to writing to the end that this court may be able to see that his orders have a basis in proof. The interests committed to the Public Utility Commission are in their nature of great importance; and if that body had not been created, the question of priority which has arisen between these oil factories and the Electric Company could have been ventilated in the ordinary judicial tribunals. The Legislature in creating the Commission did not intend that the decision of the matters confided to its oversight should rest exclusively in the experience or wisdom of any one man, or body of men. It was on the other hand intended that the proceedings before it, while not hampered by the trammels of technical procedure, should yet have the security incident to review in the Supreme Court. We therefore think it was incumbent upon the Commissioner in the matter before us, before finally promulgating his order, to have announced a hearing upon the method of distribution incorporated therein and to have permitted the parties in interest to submit proof, if they desired, with reference thereto.

At any rate, as the record stands, the order in question is not, in our opinion, reasonably supported by evidence. It must therefore be vacated, and it is so ordered, effective immediately upon notice hereof to the parties. No special pronouncement as to costs will be made.

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

CONCURRING

JOHNSON, J.,

I agree with my associates that the order in question should be annulled, but for different reasons than those given in the decision. In my opinion the Public Utility Commission had no jurisdiction to make the order in question.

I am not insensible of the importance and magnitude of the question presented, which involves the right of the State, through one of its entities, to promulgate orders and decrees which effect, modify, impair, or destroy the obligation of contracts. Neither am I unmindful of the delicate task imposed upon an appellate court when it is called upon to modify, reverse, or revoke a well considered order or decision of an inferior board or court. But, however delicate the task may be, an order or decision of a lower court which is contrary to the organic law of the State must be modified or revoked when that fact appears. If an order of a lower court is to be held illegal, it is not because the appellate court has any control over the lower court, but because the order or decision is forbidden by the fundamental law of the land or by some statute, or because the evidence adduced during the trial of the cause was not sufficient to justify said order or decision.

An order of the Public Utility Commission, like an order of any other judicial or quasi-judicial body, is not necessarily legal simply because there is proof found in the record to support the facts stated in the decision or order. Proof alone is not sufficient. The order must be supported not only by the proof but also by the statute as well as by the fundamental law of the State. If the order or decision is contrary to either, it must be revoked.

The simple facts in the present case are: That some cocoanut oil producers entered into a contract with the Manila

Electric Railroad & Light Co., for a certain number of kilowatts, or for a certain quantity of electric power or current. Later, other like establishments were created or organized for the purpose of producing coconut oil. They also entered into contracts with the same light company for electric power or current. Still later, it developed for some reason, for which the first parties were not in the least responsible, that the light company was unable to furnish all the current or power contracted for, to the second parties. When that fact developed the second or subsequent parties presented a petition to the Public Utility Commission, praying that the first parties be required to divide their contractual rights with them (the second parties). The petition was granted and the record is brought to this court for review.

No question is presented concerning the primary interests of the public as against private rights. The question presented affects private rights alone. Had a question been presented affecting the rights of the public, the result might be different. The principal question is: Must one man, who, with sufficient foresight and business acumen, has acquired certain contractual rights, divide those rights with holders of contractual rights subsequently acquired?

In the first place, it may be said that, if the Manila Electric Railroad & Light Co. has contracted to furnish, for example, one thousand kilowatts or a certain amount of electric power and it has only nine hundred kilowatts electric power to deliver, those who have the first right by virtue of the time of their contract should not be prejudiced by the fault or inability of the light company to comply with its contract with subsequent parties.

The principle, "First in time is first in law/" is a doctrine of jurisprudence as old as the history of organized governments. The literature of the law is teeming with illustrations of that doctrine. The present case furnishes one of the very best examples of the justness of that principle.

The question involved in the present case may be illustrated a little more concretely: A is an electric light and power company. B and C are manufacturers of coconut oil and use electricity as the power to move their machinery. B and C each estimates the electric power necessary and each, with a practical foresight and business acumen, enters into an unconditional contract with A for that amount of electric power. Months, or perhaps years, later D, E, and F, having discovered that the production of coconut oil is a profitable business, construct factories for that purpose and each enters into a conditional contract with A for electric power. The condition of the contracts with D, E, and F is, that A will furnish the electric power mentioned in the contract or so much of it as he can. Later, for one reason or another, A is not able to furnish to D, E, and F all the power they require. Whereupon D, E, and F present a petition to the Public Utility Commissioner, praying, in effect, that an order be issued, not that A be required to take such steps as may be necessary to comply with his contract, but to compel B and C to give to them some part of the rights which they have each acquired under their contract. The petition of D, E, and F is granted by the Commissioner. The order of the Commissioner requires A to furnish B, C, D, E, and F aliquot parts of the power which he is producing, without reference to the amount to which B and C are entitled under their respective contracts.

Another illustration will show the difficulties which will be encountered if the doctrine of the Public Utility Commission is permitted to stand unimpeached. Suppose that even during the pendency of this action G and H construct manufacturing plants and desire to use electric current as their power. They apply to A for the power necessary and are informed that no more current or power is available. May not G and H, with the same right for which D, E, and F are now contending, ask not only B and C but D, E, and F to divide their rights under their contracts equally with them (G and H) ? If D, E, and F have the right to receive an aliquot part of the power which A is producing, without reference to the right of B and C under their contract, why have not G and H the same right? This process of dividing the actual power produced equally with the increasing demands, without increasing the supply, might be continued until the contractual rights of B and C would be utterly destroyed, and

until perhaps all of the said manufacturing plants would be ruined.

Still another example may serve to illustrate and make more plain the point we are discussing, in view of the well known fact that many other persons and corporations are using electric current as power to move their machinery. A is the owner and operator of a street car system in the city of Manila. His lines traverse the entire city and extend into the suburban districts. The people, of one or of all the suburban districts who use the street cars, are sufficient to use all of the available space in the cars furnished by A, so that the people within the city limits are deprived of their right to use the cars at all or, if at all, at great inconvenience. How long would the Public Utility Commission consider a petition by the people within the city limits to compel the people in the suburban districts to use less of the available space in the cars or to use it at hours which would not interfere with their rights? The Commission would speedily deny a petition, and rightly so, and direct that a petition be presented, not that equal rights be divided, and subdivided between private individuals, but that A, under his obligation to the public, should increase his facilities and furnish adequate accommodations for all.

While upon first reading this example may not seem to be exactly analogous, yet, we believe, it fully illustrates the falsity of the contention of such second parties before us as well as the error which the Public Utility Commission has fallen into. In the foregoing illustration or example, it will be seen that private persons who are entitled to certain rights from a public utility, instead of taking necessary steps to enforce a compliance with their rights against such public utility, are endeavoring to compel a division among themselves of the rights which they have.

As was said above, no question is suggested that the primary or urgent right of the public is involved in the order in question.

The case of the Union Dry Goods Company vs. Georgia Public Service Corporation (decided by the Supreme Court of the United States on January 7, 1919, and reported in 248 U. S., 372) is cited in support of the legality of the order of the Board of Public Utility Commission. While not enough of the facts are given in that case to show its analogy with the present, it is clear that the order in that case was based upon the police power of the state. It is not contended that contracts which are made in violation of the police power of the state may not be modified and perhaps wholly set aside and annulled.

In that case (Union Dry Goods Co. vs. Georgia, 248 U. S., 372) an effort was made to regulate the rates for electric current. Cases can be easily imagined where, by reason of new and extraordinary conditions, such as war or other calamities, the continuance of old rates might be ruinous to a public utility, and, therefore, detrimental to the public, and, for the benefit of the public, a change of rates might be, indeed, imperative.

In the case of the Union Dry Goods Co. vs. Georgia [supra], the Supreme Court of the United States said: "Thus it will be seen that the case of the plaintiff in error is narrowed to the claim that reasonable rates, fixed by the state in an appropriate exercise of its police power, are invalid for the reason that, if given effect, they will supersede the rates designated in the private contract between the parties to the suit; that private contract rights must yield to the public welfare where the latter is appropriately declared and defined and the two conflict."

From said quotation it is clearly seen that the rule by which private contracts were interfered with was based upon the exercise of the police power of the state for the public good.

In the present case no intimation is made that the public in any way is interested. The electric light company has made no complaint. It was endeavoring, so far as it was possible with its present facilities, to comply with its contracts. The question is one entirely between private parties.

Has the police power ever been invoked for the purpose of enforcing, modifying, or dividing private contractual

rights where no injury is claimed by the public? In the present case the contracts were not between the immediate parties to the controversy. The contracts were between each of the parties to this controversy and a public utility. We believe that no case can be found in jurisprudence where the police power was invoked to enforce a division of contractual rights, where no claim of injury is done to the public.

The police power of the state, which is a power inherent in the Government to enact laws, within constitutional limits, to promote the good order, safety, health, morals, and the general welfare of society, has never been exercised for the purpose of enforcing purely contractual rights between private citizens of the state. (License Cases, 5 How. [U. S.], 583; Commonwealths. Alger, 7 Cush., 85; Thorpe vs. Turtland & Co., 27 Vt., 149; People vs. Budd, 117 N. Y., 14; U. S. vs. Ling Su Fan, 10 Phil., 104, 114; Forbes vs. Chuocc Tiaco, 16 Phil., 534.)

While the police power of the state is extensive and, in its enforcement, at times severe, it can only be exercised for the purpose of promoting the good order, the safety, the health, the morals, and the general welfare of the public. It cannot be invoked for the purpose of enforcing purely private rights between individuals. However broad may be the scope of police power, it is necessarily subject, in its operation, to the rule that the legislature may not exercise any power that is expressly or impliedly forbidden to it by the organic law of the state. (Ex parte Whitwell, 98 Cal., 73; Belleville vs. St. Clair County, etc., 234 Ill., 428; Ives vs. South Buffalo, etc. Co., 201 N. Y., 271.)

In order that a statute, or an ordinance, or a regulation may be sustained as an exercise of the police power, it must be demonstrated that such statute, ordinance or regulation was adopted for the prevention of some offense or manifest evil tending to affect public order, society, or moral, or for the purpose of preserving the public health, safety, and the general welfare of the public. (Lawton vs. Steele, 152 U. S., 133; Ex parte Dickey, 144 Cal., 234; People vs. Weiner, 271 Ill., 74; Chaddock vs. City Prison, 157 N. Y., 116.)

The legislature or other governmental entity may not, under the guise of the police power, impose on property a burden so excessive as to work a confiscation thereof; nor may such power be used in any other way as a cloak for the invasion of personal right or private property; neither may it be exercised for private purposes, nor for the exclusive benefit of particular individuals or classes. (Munn vs. Illinois, 94 U. S., 113; Durgin vs. Minot, 203 Mass., 26; Daly vs. Elton, 195 U. S., 242; California, etc. Co. vs. Sanitary Reduction Works, 199 U. S., 306; Laurel Hill Cemetery vs. San Francisco, 152 Cal., 464; Deems vs. Baltimore, 80 Md.(164.)

Before the police power can be exercised for the purpose of controlling private contractual rights, it must be shown conclusively that it is done for the purpose of promoting the safety, interest, and welfare of the public at large. The police power cannot be used for the purpose of invading and controlling private rights unless and until it is shown that such invasion is done for the purpose of promoting the public welfare. (Chicago, etc. Ry. Co. vs. State, 47 Neb., 549; Coppage vs. Kansas, 236 U. S., 1.)

Certainly it cannot be lawfully contended that the police power of the state can be invoked for the purpose of invading private rights and destroying private property in contravention of constitutional guaranties, until it is at least shown that it is done for the purpose of promoting the good order, the safety, the health, the morals, or the general welfare of the public.

In this jurisdiction the organic law expressly prohibits the impairment of the obligation of contracts. So jealous was the Congress of the United States of the inviolability of contracts that it inserted not only in the first organic law of July 1, 1902, but also in the Jones Law, "that no law impairing the obligation of contracts shall be enacted" in the Philippine Islands. A right secured by a contract is property. If it is a private contract, it is private property. If the legislative department of the government is prohibited from adopting or enacting laws impairing the obligation of contracts, is it conceivable that the legislature can confer upon the Public Utility Commission the

power to make orders and decrees impairing the obligation of contracts? It is not believed that in the creation of the Public Utility Commission for the control, in a limited way, of public utilities, the legislature thereby conferred upon it a power which it itself did not possess.

More than one hundred years ago the Supreme Court of the United States, in the famous Dartmouth College Case (Trustees of Dartmouth College vs. Woodward, 4 Wheat., 517), announced the doctrine that private contracts cannot be impaired by the legislative department of the government. That case has had the thoughtful approval of practically every organized government since that day. The doctrine is so well established that it almost seems to be unnecessary to cite cases now in its support. Justice Kent in his Commentaries remarks that, "it is a principle in the English law as ancient as the law itself." Neither is the doctrine confined to the English law. It is also found as a fundamental principle of the civil law. A contract, once executed, is a vested right. Bracton (Vol. 4, p. 228) says that the legislature cannot alter its mind to the prejudice of a vested right. (Vol. 2 Justinian's Institutes, 292.) Chief Justice Waite, in the case of Stone vs. Mississippi (101 U. S., 816)> says that the doctrine that private contracts are inviolate has become so embedded in the jurisprudence of the United States, as to make it, to all intents and purposes, a part of the Constitution itself.

There is no provision in the organic law of the Philippine Islands more important than the one which prohibits the enactment of laws which impair the obligation of contracts. It is one of the duties of this court to take care that this provision contained in the Jones Law shall neither be evaded nor frittered away. It is the duty of the court to see that full effect is given to that provision of the Jones Law in all its spirit. The inviolability of contracts and the duty of performing them as made, are foundations of all well-ordered societies; and it is the duty of the court to see that such foundations are not destroyed. When a contract is made, the Jones Law says that it shall not be impaired even by an act of the legislature, and it is the duty of this court to see that the organic law of the land is enforced. Some of the courts have said that to permit the violation or impairment of private contracts and thus to destroy private rights would be mischievous and detrimental to the security which the citizens enjoy under the law and would be little less than treasonable.

It may be admitted that every intendment is to be made in favor of the legality of a law or order which attempts to promote the public health, safety, and morals of the state, and that it is not the province of the courts, except in clear cases, to interfere with the exercise of the power reposed in the legislative department of the government. But notwithstanding that general rule, it is the duty of the court to see that private contracts are not interfered with under a mere guise of the police power.

In its last analysis, the present is an effort to enforce rights, or rather the division of rights between private persons only. No pretension is made by any member of the public, not even the electric light company, that the order was made for the purpose of protecting public health, morals or general welfare.

Laws should be interpreted and enforced so as to aid and not retard the business of the country.

For all of the foregoing reasons, we are of the opinion that the order made by the Public Utility Commission was made without jurisdiction, is expressly prohibited by the Jones Law, and is, therefore, null and void.

CONCURRING
ARAULLO, J.,

I am of the opinion that all the proceedings in this case should be declared null and that the order of the Board of Public Utility Commissioners in question should be declared of no effect on the sole ground that, dealing with questions concerning private contracts entered into between the Manila Electric Railroad & Light Company and

various private oil factories—questions involving private rights only, entirely unrelated to community rights in general or to public interest—in regard to the use and benefit of the electricity which said electric company is obliged to supply as a public utility (as defined by Act No. 2694 amending Act No. 2307, amended by Act No. 2362), that is, for the public use, the case does not fall within the jurisdiction of the Board of Public Utility Commissioner nor could it have exercised over the Manila Electric Railroad & Light Company the jurisdiction and authority conferred upon it by section 9 of said Act No. 2694 amending section 14 of Act No. 2307 before mentioned.

Order vacated.

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