

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLANT, VS. THE COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.

G.R. No. 23400. September 26, 1925

Ponente: STATEMENT Plaintiff alleges "that it is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila." That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue of the Philippine Islands. That during the year 1922, by contracts made in London, England, plaintiff insured certain of its properties in the Philippine Islands with the Guardian Assurance Company, of London, England, a foreign insurance company, and paid it premiums thereon in the sum of P4,832.35. That said assurance company is licensed to do business in the Philippine Islands, and is represented by local agents. That such insurance was obtained by the plaintiff itself from the assurance company, of London, without the intervention of any agent residing or doing business in the Philippine Islands. That the defendant, under the provisions of section 192 of Act No. 2427, as amended by Act No. 2430, has unlawfully and illegally levied and assessed against the plaintiff a tax of 1 per centum upon the amount of the premiums paid by plaintiff upon its foreign insurance, amounting to P48.32. That plaintiff paid this amount under written protest, and that the defendant has overruled and denied its protest, and has refused to return the money to the plaintiff. Like allegations are made in a second cause of action in which the plaintiff seeks to recover the further sum of P1,000.50. For answer the defendant alleges that the taxes sought to be recovered were lawfully and legally levied, assessed and collected by the said Collector under the provisions of the Act in question. The case was tried and submitted upon the following stipulation of facts: "AGREED STATEMENT OF FACTS "Come now the Compañia General de Tabacos de Filipinas, plaintiff, and the Collector of Internal Revenue, defendant, by their undersigned attorneys, and stipulate and agree upon the following statement of facts in this case: "I. That the plaintiff is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila. "II. That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue for the Philippine Islands. "III. That, during the year 1922, plaintiff purchased and deposited in its warehouses in the Philippine Islands, certain goods, wares and merchandise and, from time to time, by cable, notified its head office in Barcelona, Spain, of the value thereof. "IV. That plaintiff's head office in Barcelona thereupon insured said goods, wares and merchandise, for and on behalf of plaintiff, against fire, under open and running policies of insurance carried by it with the Guardian Assurance Co., of London, England, and did pay to said Guardian Assurance Co, in London, premiums on said fire insurance, during said year, of the value of P4,832.25. "V. That plaintiff's head office in Barcelona, in turn, charged to plaintiff's account the expense of said premiums paid by it as aforesaid, in the sum of P4,832.25, for said year 1922. "VI. That, subsequent to the purchase by plaintiff of the goods, wares and merchandise referred to hereinabove, plaintiff did, from time to time during the year 1922, ship said goods abroad, for sale, and did, by cable, at the time of making said shipments, notify its head office in Barcelona, Spain, of the value of said shipments. "VII. That plaintiff's head office in Barcelona thereupon insured said shipments of goods, for and on behalf of plaintiff, against marine risks, under open and running policies of insurance carried by it with Le Comite Des Assurances Maritimes de Paris, of Paris, France, and did pay to said Comite Des Assurances Maritimes, in Paris, France, premiums on said marine insurance, during the year 1922, of the value of P100,050.44. "VIII. That plaintiff's head office in Barcelona, in turn, charged to plaintiff's account the expense of said premiums paid by it, as aforesaid, in the sum of P100,050.44, for the year 1922. "IX. That both the Guardian Assurance Co. of London and Le Comite Des Assurances de Paris, are foreign corporations, the former being licensed to do business in the Philippine Islands and having an agent or agents in said Islands; that the latter company (Le Comite Des

Assurances de Paris) is not licensed to do business in the Philippine Islands and has no agent therein. "X. That all insurance effected as hereinabove recited was obtained in the manner hereinbefore recited and without the use of the services or intervention of any agent, company, corporation or other representative of the aforesaid two foreign insurance companies, residing or doing business in the Philippine Islands. "XI. That on or about the 25th day of June, 1923, the defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, and acting under the pretended authority of sec. 192 of Act No. 2427, as amended by Act No. 2430, levied, assessed and collected from plaintiff a tax of 1 per cent upon the premiums paid by plaintiff as aforesaid, as follows: "Guardian Assurance Co..... Premium P4,832.25 — Tax P48.32 "Le Comite Des Assurances de Paris Id. 100,050.044 — Do. 1,000.50 _____ "a total tax in the sum of P1,048.82 "XII. That on the 28th day of June, 1923, plaintiff paid to defendant said tax, in the sum of P1,048.82, under instant protest in writing. "XIII. That plaintiff's protest was overruled and denied by defendant on the 27th day of July, 1923; whereupon, and on the 16th day of August, 1923, plaintiff filed its action for the recovery of said taxes. "XIV. It is further stipulated that both parties to this action waive the taking of testimony in open court and agree that this cause be submitted for decision upon the foregoing facts." It was further stipulated that: "It is agreed that, had any losses occurred to plaintiff, during the year 1922, under the insurance policies carried by plaintiff's head office in Barcelona, Spain, with the Guardian Assurance Co., of London, England, and with Le Comite Des Assurances Maritimes de Paris, of Paris, France, for and on behalf of plaintiff, such losses would have been paid to plaintiff's head office, in London, and or Paris, as the case might be, for plaintiff's account." In a well written, exhaustive opinion the lower court dismissed the plaintiff's complaint, with costs, from which the plaintiff appeals, specifying the following assignment of errors: "I. The lower court erred in not declaring section 192 of Act No. 2427, as amended by Act No. 2430, void, un- constitutional and violative of section 3 of the Jones Law—Act of Congress of August 29, 1916,—which provides that the rule of taxation in the Philippine Islands shall be uniform. "II. The lower court erred in not declaring section 192 of Act No. 2427, as amended by Act No. 2430, void, unconstitutional and violative of that certain other provision of section 3 of the Jones Law which provides that no law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty, or property without due process of law. "III. The lower court erred in not holding that the cables sent by plaintiff to its head office in Barcelona (advising Barcelona of the value of goods on deposit or being shipped by plaintiff from these Islands) were collateral and subsequent to the creation of the principal contracts of foreign insurance." JOHNS, J.

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STATEMENT

Plaintiff alleges "that it is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila." That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue of the Philippine Islands. That during the year 1922, by contracts made in London, England, plaintiff insured certain of its properties in the Philippine Islands with the Guardian Assurance Company, of London, England, a foreign insurance company, and paid it premiums thereon in the sum of P4,832.35. That said assurance company is licensed to do business in the Philippine Islands, and is represented by local agents. That such insurance was obtained by the plaintiff itself from the assurance company, of London, without the intervention of any agent residing or doing business in the Philippine Islands. That the defendant, under the provisions of section 192 of Act No. 2427, as amended by Act No. 2430, has unlawfully and illegally levied and assessed against the plaintiff a tax of 1 per centum upon the amount of the premiums paid by plaintiff upon its foreign insurance, amounting to P48.32. That plaintiff paid this amount under written protest, and that the defendant has overruled and denied its protest, and has refused to return the money to the plaintiff. Like allegations are made in a second cause of action in which the plaintiff seeks to recover the further sum of P1,000.50.

For answer the defendant alleges that the taxes sought to be recovered were lawfully and legally levied, assessed and collected by the said Collector under the provisions of the Act in question.

The case was tried and submitted upon the following stipulation of facts:

"AGREED STATEMENT OF FACTS

"Come now the Compañía General de Tabacos de Filipinas, plaintiff, and the Collector of Internal Revenue, defendant, by their undersigned attorneys, and stipulate and agree upon the following statement of facts in this case:

"I. That the plaintiff is a corporation duly organized and existing under the laws of the Kingdom of Spain, licensed to do business in the Philippine Islands, and maintaining its principal office in said Islands in the City of Manila.

"II. That the defendant is the duly appointed, qualified and acting Collector of Internal Revenue for the Philippine Islands.

"III. That, during the year 1922, plaintiff purchased and deposited in its warehouses in the Philippine Islands, certain goods, wares and merchandise and, from time to time, by cable, notified its head office in Barcelona, Spain, of the value thereof.

"IV. That plaintiff's head office in Barcelona thereupon insured said goods, wares and merchandise, for and on behalf of plaintiff, against fire, under open and running policies of insurance carried by it with the Guardian Assurance Co., of London, England, and did pay to said Guardian Assurance Co, in London, premiums on said fire insurance, during said year, of the value of P4,832.25.

"V. That plaintiff's head office in Barcelona, in turn, charged to plaintiff's account the expense of said premiums paid by it as aforesaid, in the sum of P4,832.25, for said year 1922.

"VI. That, subsequent to the purchase by plaintiff of the goods, wares and merchandise referred to hereinabove, plaintiff did, from time to time during the year 1922, ship said goods abroad, for sale, and did, by cable, at the time of making said shipments, notify its head office in Barcelona, Spain, of the value of said shipments.

"VII. That plaintiff's head office in Barcelona thereupon insured said shipments of goods, for and on behalf of plaintiff, against marine risks, under open and running policies of insurance carried by it with Le Comite Des Assurances Maritimes de Paris, of Paris, France, and did pay to said Comite Des Assurances Maritimes, in Paris, France, premiums on said marine insurance, during the year 1922, of the value of P100,050.44.

"VIII. That plaintiff's head office in Barcelona, in turn, charged to plaintiff's account the expense of said premiums paid by it, as aforesaid, in the sum of P100,050.44, for the year 1922.

"IX. That both the Guardian Assurance Co. of London and Le Comite Des Assurances de Paris, are foreign corporations, the former being licensed to do business in the Philippine Islands and having an agent or agents in said Islands; that the latter company (Le Comite Des Assurances de Paris) is not licensed to do business in the Philippine Islands and has no agent therein.

"X. That all insurance effected as hereinabove recited was obtained in the manner hereinbefore recited and without the use of the services or intervention of any agent, company, corporation or other representative of the aforesaid two foreign insurance companies, residing or doing business in the Philippine Islands.

"XI. That on or about the 25th day of June, 1923, the defendant, in his capacity as Collector of Internal Revenue for the Philippine Islands, and acting under the pretended authority of sec. 192 of Act No. 2427, as amended by Act No. 2430, levied, assessed and collected from plaintiff a tax of 1 per cent upon the premiums paid by plaintiff as aforesaid, as follows:

"Guardian Assurance Co..... Premium P4,832.25 — Tax

P48.32

"Le Comite Des Assurances de Paris Id. 100,050.044 — Do.

1,000.50

"a total tax in the sum of

P1,048.82

"XII. That on the 28th day of June, 1923, plaintiff paid to defendant said tax, in the sum of P1,048.82, under instant protest in writing.

"XIII. That plaintiff's protest was overruled and denied by defendant on the 27th day of July, 1923; whereupon, and on the 16th day of August, 1923, plaintiff filed its action for the recovery of said taxes.

"XIV. It is further stipulated that both parties to this action waive the taking of testimony in open court and agree that this cause be submitted for decision upon the foregoing facts."

It was further stipulated that:

"It is agreed that, had any losses occurred to plaintiff, during the year 1922, under the insurance policies carried by plaintiff's head office in Barcelona, Spain, with the Guardian Assurance Co., of London, England, and with Le Comite Des Assurances Maritimes de Paris, of Paris, France, for and on behalf of plaintiff, such losses would have been paid to plaintiff's head office, in London, and or Paris, as the case might be, for plaintiff's account."

In a well written, exhaustive opinion the lower court dismissed the plaintiff's complaint, with costs, from which the plaintiff appeals, specifying the following assignment of errors:

"I. The lower court erred in not declaring section 192 of Act No. 2427, as amended by Act No. 2430, void, unconstitutional and violative of section 3 of the Jones Law—Act of Congress of August 29, 1916,—which provides that the rule of taxation in the Philippine Islands shall be uniform.

"II. The lower court erred in not declaring section 192 of Act No. 2427, as amended by Act No. 2430, void, unconstitutional and violative of that certain other provision of section 3 of the Jones Law which provides that no law shall be enacted in the Philippine Islands which shall deprive any person of life, liberty, or property without due process of law.

"III. The lower court erred in not holding that the cables sent by plaintiff to its head office in Barcelona (advising Barcelona of the value of goods on deposit or being shipped by plaintiff from these Islands) were collateral and subsequent to the creation of the principal contracts of foreign insurance."

JOHNS, J.:

As appellant says, "the whole case revolves around the last proviso of section 192 of Act No. 2427, as amended by Act No. 2430, which reads as follows:

" * * * And provided further, That the prohibitions of this section shall not affect the right of an owner of property to apply for and obtain for himself policies in foreign companies in cases where said owner does not make use of the services of any agent, company, or corporation residing or doing business in the Philippine Islands. In all cases where owners of property obtain insurance directly with foreign companies, it shall be the duty of said owners to report to the Insurance Commissioner and to the Collector of Internal Revenue each case where insurance has been so effected, and shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so."

Relying upon section 3 of the Jones Law, which provides:

" * * * That the rule of taxation in said Islands shall be uniform, * * * " appellant vigorously contends that the law is unconstitutional, citing *In re Thomas Page* (60 Kan., 842; 58 Pac., 478; 47 L. R. A., 68), where it is held:

"Taxation; Public Uses; Uniformity.—'An act providing for the taxation of contracts of insurance made with insurance companies not authorized to do business in Kansas, and providing for the enforcement thereof (Laws 1899, c. 249), in part authorizes the imposition of a tax for other than public purposes. It is also a distinct departure from the constitutional rule of uniformity and equality, and is invalid."

This decision apparently sustains appellant's contention.

The statute upon which that statement is based is not quoted in the briefs and is not in the library. The opinion says that in the last session of the legislature there was passed:

" 'An act providing for the taxation of contracts of insurance made with insurance companies not authorized to do business in Kansas, and providing for the enforcement thereof.' * * * "

And that:

" * * * The statute provides that persons insuring property in Kansas with companies not authorized to do business in the state shall report the contracts of insurance to the superintendent of insurance for the purpose of taxation. All such contracts are to be taxed 'in a sum equal to ten per cent of the amount of premiums paid or contracted to be paid thereon * * * .'"

Any violation of the provisions of the Act would be a misdemeanor.

It appears that Page, the owner of a milling property in Topeka, Kansas, wrote to an insurance company of Indianapolis, Indiana, proposing to take out insurance on his milling property in Topeka. The policy was issued by, and the premium paid to, that company, which was not authorized to do business in Kansas, and which had no office or agent in that State. The insurance commissioner made a demand upon Page to pay the 10 per cent tax upon the policy, and Page refused payment and challenged the law upon the ground that "the legislature shall provide for a uniform and equal rate of assessment and taxation," and the court held the law unconstitutional. It will be noted that the constitution there in question requires that "the legislature shall provide for a uniform and equal rate of assessment and taxation." The Jones Law provides "that the rule of taxation in said Islands shall be uniform." The word "assessment" is not found in section 3 of the Jones Law.

Among other things, the opinion in the Page case says:

"* * * In the absence of constitutional restrictions, the sovereign power of the state may be exercised almost without limitation in determining what should be subject to taxation, and the manner of levying and collecting taxes. Of course, arbitrary and unequal exactions cannot be levied upon persons or property, nor can revenues raised by the exercise of this power be expended for other than public purposes. Unless, however, a tax for public purposes is imposed on false and unjust principles, or violates an express provision of the constitution, the will of the legislature is conclusive. * * *"

The opinion also says:

"* * * To accomplish the uniformity and equality required by the constitution, it would appear that assessment or valuation is indispensable; and yet in this case the legislature, without assessment or valuation of the property, attempts to make an arbitrary exaction. All other property in the state is required to be taxed at its true value in money, but here no account is taken of the solvency of the company or the value of the security or policy. * * *"

Under the Kansas constitution, there must be a uniformity and equal rate of both "assessment" and "taxation," and by reason of the fact that there was no provision in the law there in question for the "assessment" of the value of the premiums, upon that point, the law was held unconstitutional. That is not this case, and the omission and distinction is important.

The opinion further says:

"* * * The lack of uniformity is manifest in another way: One taxpayer has a policy written in the state by a company with authority, upon which no tax is imposed, while his neighbor has one written by an unlicensed company at Indianapolis, or other place outside of the state, which is subject to taxation; Taxes are uniform and equal when imposed upon all property of the same character within the taxing district, and yet here the insured pays a 10 per cent tax upon a policy written outside of the state, while his neighbor pays nothing upon a policy of equal value, and affording the same protection, because it is written within the state. * * *"

Under the Kansas statute, Page was required to pay 10 per cent of the premiums on his foreign insurance, and here it is a tax of 1 per cent on such premiums, and the law of this country provides that there shall be collected from every person, company or corporation doing any kind of insurance business in the Philippine Islands a tax of one per centum of the total premiums of all premiums collected during each calendar year. In other words, under the law here, the Government receives 1 per cent of all the premiums paid on domestic insurance. It is very apparent from the opinion in the Page case that there is no such a law in the State of Kansas.

The last proviso of section 192 above quoted must be construed in connection with, and as it relates to, section 1505 of the Administrative Code of 1917, which is as follows:

"There shall be collected from every person, company, or corporation (except purely cooperative companies or associations) doing insurance business of any sort in the Philippine Islands a tax of one per centum of the total premiums collected during each calendar year, whether paid in money, notes, credits, or any substitute for money, but premiums refunded within six months after payment on account of rejection of risk or returned for other reason to persons insured shall not be included in the taxable receipts; nor shall any tax be paid upon reinsurance by a company that has already paid the tax.

" 'Cooperative companies or associations' are such as are conducted by the members thereof with money collected from among themselves and solely for their own protection and not for profit."

As to the law here in question, we have this situation, the Government receives 1 per cent of all premiums collected on domestic insurance which is paid by the insurance companies, and where the insurance is made in a foreign company without the services of an agent by a person here on property here, the provision above quoted

requires that the insured "shall pay the tax of one per centum on premiums paid, in the manner required by law of insurance companies," That is to say, in one case, the 1 per cent tax is paid by the insurance company, and, in the other, it is paid by the insured. But, as a matter of fact, in both cases, it is paid by the insured. In actual practice, the amount of any tax paid on the premiums collected by the insurance company is added to, and becomes a part of, the premium itself, and, in the final analysis, is paid by the insured. If, as a matter of fact, the 1 per cent tax is collected on premiums on domestic insurance and is not collected on premiums paid on foreign insurance, you would then have an "invidious discrimination" against domestic insurance. It is also contended that the Act in question is unconstitutional under that portion of section 3 of the Jones Law, which reads as follows:

"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. * * *"

Appellant says:

"Our contention is that section 192 of Act No. 2427, as amended by Act No. 2430, is invalid in so far as it attempts to prohibit the making and obtaining of marine and fire insurance policies outside of the Philippine Islands, with foreign insurance companies, on property then in these Islands, because it is a deprivation of the liberty of citizens of these Islands without due process of law.

"The leading case on this question is that of *Allgeyer vs. State of Louisiana*, 165 U. S., 578; 41 Law. ed., 832, in which the State of Louisiana attempted to enforce the collection of a fine of \$1,000 from the defendants *Allgeyer* and others for the supposed violation of Louisiana Statute No. 66, of 1894, entitled—

" 'An Act to Prevent Persons, Corporations, or Firms from Dealing with Marine Insurance Companies That Have Not Complied with Law.'

"This Act, in its material part, reads as follows:

" 'Be it enacted by the General Assembly of the State of Louisiana, That any person, firm, or corporation who shall fill up, sign, or issue in this state any certificate of insurance under an open marine policy, or who in any manner whatever does any act in this state to effect for himself, or for another, insurance on property then in this state, in any marine insurance company which has not complied in all respects with the laws of this state, shall be subject to a fine of \$1,000 for each offense, * * *.' (*Allgeyer vs. State of Louisiana*, 165 U. S., 578; 41 Law. ed., 832.)"

It will be noted that there is a very marked distinction between the Louisiana statute upon which that decision is based and which was held unconstitutional and the statute here in question. Under the Louisiana statute, it was made a crime for any person in Louisiana to insure his property in that State in an insurance company "which has not complied in all respects with the laws of this state." The law in question is not intended to prohibit any person in the Philippines from insuring his property here in a foreign insurance company. In fact, it recognizes his right to do so. But it says to all persons, if you insure your property in the Philippines in a foreign insurance company, which is not authorized to do business here, you must pay the Government the 1 per cent tax on the premium which it would have received if the property had been insured through an agent of a company authorized to do business in the Philippine Islands.

Appellant also relies on the case of *St. Louis Cotton Compress Co. vs. State of Arkansas* (260 U. S., 346; 67 Law. ed., 297). That was a suit by the State of Arkansas against a corporation in Missouri authorized to do business in Arkansas, and was brought to recover 5 per cent of the gross premiums paid by the defendant for insurance upon its property in Arkansas to companies, not authorized to do business in the State. The answer alleged that the policies were contracted for, delivered, and paid for in St. Louis, the domicil of the corporation, because the rates were less than those charged by companies authorized to do business in Arkansas.

It will be noted that the tax there in question was 5 per cent. Here, it is 1 per cent, which is the identical amount of tax required to be paid by domestic insurance companies. No reference is made in the opinions of any of the decisions cited as to the amount of tax, if any, which domestic insurance companies are required to pay on premiums, and it is very doubtful whether any such tax is, levied by any state on such corporations. No decision founded on a like statute is cited in either brief, and in so far as we are advised, there is no like statute. Hence, this case is one of first impression not only in this court, but as to the statute in question. The statute was enacted for revenue purposes.

To hold the law unconstitutional would in effect amount to a discrimination in favor of a foreign insurance company which is not authorized to do business in the Philippine Islands and against insurance companies that are authorized to do business here.

After the trial court rendered its decision, the plaintiff filed a motion for a new trial in which it said:

"We believe the court failed to appreciate the nature of the insurance obtained and carried by plaintiff's head office in Barcelona, Spain," pointing out that, under the agreed statement of facts, plaintiff's goods were insured "under open and running policies of insurance carried by it" (plaintiff's head office in Barcelona, Spain).

In deciding that motion the lower court said:

"In the first place, plaintiff is a corporation—a juridical person. There is no difference between its juridical personality in Manila and in Barcelona. In either place it acts by and through agents. In the matters here in question the plaintiff in Manila acted by and through its agents in Barcelona.

"In the second place, the agreed statement of facts shows: 'That, during the year 1922, plaintiff purchased and deposited in its warehouses in the Philippine Islands certain goods, wares and merchandise, and from time to time, by cable, notified its head office in Barcelona, Spain, of the value thereof,' and 'That plaintiff's head office in Barcelona thereupon insured said goods, wares and merchandise, for and on behalf of plaintiff, against fire, under open and running policies of insurance carried by it with the Guardian Assurance Co., of London, England, and did pay to said Guardian Assurance Co., in London, premiums on said fire insurance, during said year, of the value of P4,832.25', and That, subsequent to the purchase by plaintiff of the goods, wares and merchandise referred to hereinabove, plaintiff did, from time to time, during the year 1922, ship said goods abroad, for sale, and did, by cable, at the time of making said shipments, notify its head office in Barcelona, Spain, of the value of said shipment', and 'That plaintiff's head office in Barcelona thereupon insured said shipments of goods, for and on behalf of plaintiff, against marine risks, under open and running policies of insurance carried by it with Le Comite Des Assurances Maritimes de Paris, of Paris, France, and did pay to said Comite Des Assurances Maritimes, in Paris, France, premiums on said marine insurance, during the year 1922, of the value of P100,050.44'; and it was further agreed that in each case plaintiff's head office charged to plaintiff's account the expense of said premiums paid by it.

"Now, when were the respective cables sent by plaintiff from Manila, before or after these goods were insured? The so-called open and running policies are not before the court, but the said agreed facts clearly show that, after the goods were purchased and deposited in warehouses in the Philippine Islands, a cable was sent by plaintiff to its Barcelona office giving their value, and that thereupon plaintiff's Barcelona office insured said goods against fire; that subsequent thereto plaintiff shipped said goods abroad, and that, at the time of making said shipments, plaintiff cabled its head office in Barcelona the value of said shipments, and that thereupon plaintiff's Barcelona office insured said shipments of goods, for and on behalf of plaintiff, against marine risks.

"While it is true that the open and running policies may have been in existence before the goods in question were purchased by plaintiff and shipped abroad, yet those policies were not made applicable to said goods until the respective cables were sent from Manila to Barcelona and plaintiff's office in Barcelona insured the goods

as set forth in the statement of facts. Thus the goods were insured against fire after they were placed in warehouses in the Philippines and a cable was sent from Manila giving their value, and they were insured against marine risks after they were placed on board ship in Manila and a cable was sent from Manila giving the value of the shipment."

As the trial court says: "The present case is unique." That is true. Neither party has cited a decision under like statute, and in so far as we are advised, there is no like statute.

In legal effect there is no prohibition against a person doing business in the Philippine Islands insuring property here with an insurance company, which is not authorized to do business here. The Government says that you can insure your property in either a foreign or domestic insurance company, but if you insure it in a foreign insurance company, then you must pay the 1 per cent tax which an insurance company authorized to do business in the Philippine Islands is required to pay to the Government, and the whole matter is left entirely to the discretion of the insured. That is not discrimination. Neither does it "deprive any person of life, liberty, or property, without due process of law," and, in actual practice, "the rule of taxation is uniform," and the law in question is alike as to any and all persons similarly situated. To hold otherwise would be to require a domestic insurance corporation to pay a tax of 1 per cent on its premiums collected, and to permit a person having property here to insure it in a foreign corporation not authorized to do business in the Philippines, and to avoid payment of the 1 per cent tax. The law in question was enacted to prevent the doing of that very thing.

Under all of the circumstances, we are not prepared to hold the law unconstitutional.

The judgment of the lower court is affirmed, with costs. So ordered.

Avanceña, C. J., Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.

DISSENTING

JOHNSON and STREET, JJ.:

We regret that we are unable to concur in the decision of the court in this case. By section 1505 of the Administrative Code a tax equivalent to one per centum of the total premiums collected is imposed on all insurance companies doing insurance business of any sort in the Philippine Islands; and the closing proviso to section one of Act No. 2430 in effect declares that in all cases where insurance is effected on property in these Islands in a foreign company not authorized to do business here, and without the intervention of an agent,—with the result that the tax collector cannot get at the company for the purpose of collecting the tax,—it shall be paid by the owner of the property insured. As put in the brief of the Attorney-General the Government says in substance to the owner: "If you insure your property with insurance companies paying taxes to me you pay no taxes. If you insure it with insurance companies which do not and cannot be made to pay taxes to me because they are beyond my jurisdiction, you pay the taxes that leak from my coffers on account of your act."

Is this a legitimate exercise of the taxing power? We think not. The circumstance that the person primarily liable for a tax cannot be reached for the purpose of collecting it, supplies no justification for taking the tax out of another. A law so providing is arbitrary and capricious and in our opinion constitutes a violation of the rule of uniformity prescribed in section 3 of the Jones Law and is a denial of the equal protection of the law guaranteed by the same section.

The requirement that the rule of taxation shall be uniform not only means that in taxes on property the rate shall

be uniform but also that in business, occupation and privilege taxes generally, the amount of the taxes shall be the same for all persons circumstanced alike, and that furthermore the classification of persons for the purposes of such taxation shall be reasonable and not arbitrary. (37 Cyc., 732-736.)

In *Southern Railway Co. vs. Greene* (216 U. S., 400; 54 Law. ed., 536), the case was presented of a foreign railway corporation that had come into the State of Alabama in compliance with its laws, had therein acquired property of a fixed arid permanent nature, upon which it had paid all the taxes theretofore levied by the state. The legislature of the state then passed a law imposing on foreign railway corporations an additional franchise tax for the continued privilege of doing business within the state. No such tax was imposed upon domestic corporations carrying on a precisely similar business. It was held that the complainant corporation was a person within the jurisdiction of the state and that the statute complained of deprived it of the equal protection of the law, as the classification was arbitrary and unreasonable. Said the court: "* * * While reasonable classification is permitted, without doing violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without any substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification."

If the legislature, in creating the tax on insurance contracts, had placed the burden of paying the tax on all owners alike, the present plaintiff would undoubtedly have been liable. But when those owners who place their insurance directly in a foreign company without the intervention of an agent are singled out for taxation merely because the insuring company cannot be reached, the classification becomes discriminatory and vicious.

The author of the note to *Hager vs. Walker* (129 Am. St. Rep., 238, 257), observes that a statute or ordinance which, in imposing license taxes, discriminates in favor of residents of the city or state as against non-residents in the same class is unconstitutional. Says he: "* * * Such classification, on the sole ground of residence, cannot be sustained. It is arbitrary, unreasonable, tends to restrain trade and to create monopoly, denies the equal protection of the laws, and in so far as it applies to residents of other states, violates the rule that the citizens of each state are entitled to all the immunities of the citizens of the several states, and perhaps is an interference with interstate commerce." We are of course not here concerned with any infringement of the rights of citizens of the United States with reference to other states of the Union, since the case before us presents the phase of a contract made between the owner of property in these Islands and a foreign corporation; but the discrimination here appears to be equally invidious and repugnant to the sense of international comity.

In *Juniata Limestone Co., vs. Fagley* (187 Pa. St., 193; 67 Am. St. Rep., 579), it appeared that the legislature of the State of Pennsylvania had passed a law imposing a tax on employers of foreign born, unnaturalized male persons, while no such provision was made with respect to citizens of the state. It was held that the Act was unconstitutional, as being in conflict with the fourteenth amendment of the Federal Constitution and with a provision in the state constitution providing that all taxes should be uniform upon the same class of subjects. (See *State vs. Goodwill*, 33 W. Va., 179; 25 Am. St. Rep., 863; *Ex Parte Kuback*, 85 Cal., 274; 20 Am. St. Rep., 226.)

The undersigned are therefore of the opinion that judgment should be reversed and the tax returned to the plaintiff.

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