

LUZON BROKERAGE CO., INC., PETITIONER, VS. THE PUBLIC SERVICE COMMISSION AND A. D. WILLIAMS, DIRECTOR OF THE BUREAU OF PUBLIC WORKS, RESPONDENTS.

G. R. No. 37661. November 16, 1932

Ponente: BUTTE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-37661/>

BUTTE, J.:

This is an action within the original jurisdiction of this court in which the petitioner prays for a writ of prohibition ordering the respondents, their officers, representatives and subordinates to desist and refrain from requiring the petitioner to comply with the resolutions and orders of the Public Service Commission to the effect that the petitioner file an application with the commission for a certificate of public convenience and necessity for the operation of its auto-trucks and notifying the petitioner that upon failure to comply therewith, the Director of Public Works will be instructed immediately to confiscate the TH automobile license plates issued to the petitioner for the operation of the auto-trucks in question.

The same petitioner filed an almost identical petition for writ of prohibition against the same respondents in a former suit, G. R. No. 36752, which was denied by this court under date of February 5, 1932, on the ground that the suit was premature, in view of the fact that at that time, apart from the promulgation of a general circular (Exhibit A) in that case, no action had been taken by the Public Service Commission to determine if the petitioner is a public utility or a public service within the legal meaning of said terms, and no decision had been rendered by the Public Service Commission to determine if it had jurisdiction over the particular business conducted by the petitioner. Since that decision, the Public Service Commission addressed to the petitioner the following letter :

"May 9, 1932

"GENTLEMEN : In accordance with the ruling of the Supreme Court, and by virtue of the indorsement of the Director of Public Works of April 14, 1932, relative to your filing an application with this Commission for the operation of a TH truck service, you are hereby given thirty (30) days from the date hereof within which to file an application with this Commission for a certificate of public convenience for the operation of a TH truck service, as provided for in section 13 of Act No. 3108, as amended.

"The fact that your trucks are registered under the TH denomination indicates that the said trucks are devoted to the transportation of cargoes for compensation.

"Very respectfully,

(Sgd.) "R. A. CRUZ

"Acting Commissioner "

The LUZON BROKERAGE COMPANY, Manila"

To this letter, the petitioner, under date of June 3, 1932, through its counsel, replied that it could not see its way

clear to comply with the requirement of the commission that it file within a period of thirty days an application for a certificate of public convenience and necessity for the operation of its TH trucks; that "it has taken and consistently maintains the position that it is not a public service or a public utility within the meaning of the Public Service Law, and, therefore, may not be obliged to obtain a certificate of public convenience". Upon receipt of the said communication from the petitioner, the commission adopted the following resolution:

"Considering the fact that the auto-trucks owned and operated by the Luzon Brokerage Co. are registered in the Bureau of Public Works under TH denomination, and are offered for hire or compensation to the public, even taking for granted that they are so offered to a limited or specified number of individuals and firms as alleged in the said communication, it appears clear or manifest that the said transportation service comes under the provisions of article 13 of Act No. 3108, as amended.

"The Commission is, therefore, of the opinion, and so rules, that the operation of the auto-trucks in question comes well within the jurisdiction of the Commission, in accordance with said provisions of article 13 of Act No. 3108. The Luzon Brokerage Co. is hereby ordered and required to file within fifteen days from notice hereof, the corresponding application for authority to operate the said auto-trucks. Upon the expiration of the said period of fifteen days and should the said company fail to comply with the terms of this order, the matter will be endorsed to the Director of Public Works with instructions to immediately confiscate the TH plates issued to the Luzon Brokerage Co. for the auto-trucks in question." On June 22, 1932, the petitioner filed this action for writ of prohibition and on the same day the Vacation Justice issued a preliminary injunction as prayed for and required the respondents to answer the petition.

On July 1, 1932, the Attorney-General filed an answer on behalf of the respondents in the nature of a general denial admitting, however, "that for approximately twenty years last past the petitioner has been and still is conducting the business of customs broker and that it has been and is maintaining and operating a fleet of trucks in connection with said business, furnishing-transportation service for which it makes and collects charges". vee

The answer of the respondents sets up the following special defense:

"The respondents contend that even admitting that the petitioner uses its trucks in question exclusively for the carriage of goods or cargo belonging to its patrons who pay for such transportation service upon the basis of previous or existing agreement or contract, and that it does not solicit nor accept from the public indiscriminately goods or cargo for transportation on its aforementioned trucks, yet said trucks are subject to the jurisdiction and control of the respondent Public Service Commission by virtue of the provisions of section 13 of Act No. 3108 as amended by section 6 of Act No. 3316, inasmuch as the petitioner maintains and operates them for hire¹ or compensation."

On July 26, 1932, the parties filed in this court the following agreed statement of facts which is set out in full because no other evidence was taken, and the decision of this case turns upon the facts as set out in said stipulation:

"AGREED STATEMENT OF FACTS

- That the petitioner is a corporation duly organized and existing under the laws of the Philippine Islands and having its principal office and place of business therein in the City of Manila; that the respondent, Public Service Commission, is a tribunal or board created by statute and exercising judicial functions under and by virtue of Act No. 3108, as amended, of the Philippine Legislature, and the other respondent, A. D. Williams, is the duly appointed, qualified and acting director of the Bureau of Public Works of the Government of the Philippine Islands, which bureau is charged by law with the functions, among other things, of registering motor vehicles of all kinds and licensing the operators of such vehicles.
- That for approximately twenty years last past, the petitioner has been and still is conducting the business of

customs broker and that in connection therewith, the petitioner conducts the business of receiving, storing, forwarding and delivering cargoes of all kinds; that in connection with said business and not otherwise, the petitioner has been and is maintaining and operating a fleet of trucks designed and utilized exclusively for the carriage of goods or cargo of its particular customers, which from time to time are landed and received from vessels and delivered to the consignees or owners thereof, or are forwarded and delivered to such vessels for shipment.

- That the petitioner does not solicit nor accept nor hold itself out as ready or willing to accept from the public indiscriminately goods or cargo for transportation on its aforesaid trucks, and has no intention of doing so; and that All the transporting, carrying, and delivering business conducted by the petitioner is limited and confined to the articles, goods, and wares of its patrons as customs broker.

- That for brokerage services rendered by the petitioner including receiving, storing, loading or unloading, placement and delivery of cargo or goods, it makes and collects charges, the amount of which is determined in each instance upon the basis of previous or existing special contract had with the particular patron or customer for whom such services are rendered; that the petitioner receives compensation for its transportation and delivery services in addition to its customary customs brokerage fees.

- That during the years that the petitioner has been doing business as aforesaid up to and including the current year 1932, it has caused all of its trucks used in connection therewith to be duly registered and licensed in the Bureau of Public Works under the so-called TH denomination, paying therefor the corresponding annual registration and license fees, in accordance with the requirements of said bureau.

- That the petitioner has been conducting exactly the same nature of business as aforesaid in the Philippine Islands, particularly in the City of Manila therein, for the past twenty years, without having ever been required directly, except in the instance hereinafter adverted to, by the Public Service Commission or the predecessors thereof to secure a certificate of public convenience for the operation of its trucks, or otherwise to submit this incidental aspect of its business to the jurisdiction, regulation and control of said commission.

- That a few months after the petitioner had secured from the respondent Director of Public Works the registration and licensing for the current year of its trucks aforesaid, it received from the Honorable R. A. Cruz, then Acting Commissioner of the Public Service Commission, a letter dated May 9, 1932, requiring the petitioner to file with the commission within a period of thirty days an application for a certificate of public convenience for the operation of said trucks for the alleged reason that said trucks were devoted to the transportation of cargo for compensation as provided in section 13 of the Public Service Law. A copy of said letter has been attached as Exhibit A to the petition filed herein, and is hereby referred to for greater certainty.

- That, to the Acting Commissioner's communication above-mentioned, the petitioner through its attorney made reply under date of June 3, 1932, wherein the Public Service Commission was informed, among other things, that the petitioner is not a 'public service' or 'public utility' in contemplation of law in view of the facts and circumstances in said reply more particularly set forth, and the suggestion was made that the question of whether or not the petitioner operates a public service be first determined definitely after appropriate hearing before requiring said petitioner to obtain a certificate of public convenience. A copy of said reply appears attached as Exhibit B to the petition filed herein, and is hereby referred to for greater certainty.

- That in its session of June 9, 1932, the respondent Public Service Commission, acting and passing upon the merits of the petitioner's contention as set forth in the latter's reply referred to as Exhibit B, adopted a resolution whereby said commission ruled that the operation by the herein petitioner of the trucks above-mentioned came well within the jurisdiction of the Public Service Commission by virtue of the provisions of section 13 of Act No. 3108, as amended, and in view thereof ordered the petitioner to file within fifteen (15) days from date of notification the proper application for authority to operate said trucks, with the admonition that upon non-compliance by the petitioner with said order, the Director of Public Works would be instructed to confiscate the license plates issued to the petitioner for the trucks in question. A certified copy of

said resolution and order, which was served upon the petitioner through its attorney on June 11, 1932, appears attached as Exhibit C to the petition filed herein and is hereby referred to for greater certainty.

- That immediately upon promulgation of the aforesaid resolution and order, a copy thereof was furnished the respondent Director of Public Works for attention and execution and that said respondent director manifested his readiness and willingness to carry out the instructions of the commission relative to the confiscation of the license plates for 1932 of the trucks operated by the petitioner.

- That, according to established practice and existing regulations of the Bureau of Public Works, motor trucks may be registered in said bureau under either of the following denominations: (a) T for trucks devoted exclusively to the carriage of owner's goods or cargo; (b) TH for trucks carrying cargo only, for compensation or hire; (c) TG for trucks duly licensed as garage by the municipal or city authorities concerned and authorized to be operated as such by the Public Service Commission; and (d) TPU for trucks which are devoted to public use or service for the carriage of passengers and freight or cargo and are operated under certificate of public convenience. That since January 1, 1932, the Public Service Commission, invoking the provisions of section 13 of Act No. 3108 as amended, has required all owners or operators of TH trucks to submit to the jurisdiction of said commission and to obtain certificates of public convenience for the operation of such trucks. That the herein petitioner has challenged, still challenges, and has never submitted to, the jurisdiction of the Public Service Commission insofar as the same pertains to the operation of petitioner's trucks aforesaid, and questions the validity and constitutionality of the law relied on by the commission in respect to and insofar as it may affect the operation of petitioner's trucks in the conduct of its business."

Although the petitioner has been operating its trucks in connection with its business as customs broker for approximately twenty years last past, it does not appear that the Public Utility Commission undertook to assume any jurisdiction over the operation of said trucks prior to the amendment of the Public Service Act by Act No. 3316 which took effect on December 4, 1926; or that there was any attempt to subject said business to regulation under Acts Nos. 2307, 2362 or 2694 with relation to the regulation of public utilities. In other words, it seems to be conceded that the Public Utility Acts Nos. 2307, 2362, 2694 and 3108 which took effect on December 19, 1913, February 28, 1914, March 9, 1917, and March 19, 1923 respectively, did not give jurisdiction and control over the said auto-trucks of the petitioner which were being operated on the dates of said Acts and thereafter in connection with the petitioner's business as customs broker in the same manner as they are now. It follows that the respondents and the Government of the Philippine Islands did not regard said trucks as common carriers or a public utility as denned in said Acts. As it does not appear that there is any difference in the character or operation of said business since the amendments made by Act No. 3316, it follows that if the said amendatory Act now embraces said business, a material extension and enlargement of the businesses previously subject to the jurisdiction of the commission was accomplished by the said amendments. As Acts Nos. 2307, 2362, 2694 and 3108 included "any common carrier" as a public utility and neither the Public Utility Commission nor any officer made any attempt to subject the petitioner to regulation as such, the conclusion seems inescapable that the business of the petitioner was not regarded as falling within the classification of a common carrier. Section 13 as amended by Act No. 3316, likewise includes in the definition of a public service "any common carrier". As neither the nature of the petitioner's business nor the accepted definition of "any common carrier" is any different from what it was before said Act took effect, it follows that the operation of the petitioner's auto-trucks is no more a common carrier business since Act No. 3316 took effect than it was before. In other words, what was not a common carrier business under Act No. 3108 is not a common carrier business under Act No. 3316. Moreover, paragraph 3 of the agreed state-ment of facts seems to us to take the operation of petitioner's trucks out of the classification of common carriers. (Cf. *U. S. vs. Tan Piao*, 40 Phil., 853; and *Iloilo Ice and Cold Storage Co. vs. Public Utility Board*, 44 Phil., 551.)

Although the respondents' brief contends that the petitioner is not a private carrier, we do not understand that the

respondents go so far as to contend that the petitioner is a common carrier. In respondents' brief, page 19, it is stated:

"The law in question (section 6 of Act No. 3316) does not convert it (the petitioner) into a common carrier. It simply declares the operation and maintenance of its fleet of trucks a public service and as such it merely requires it to secure a certificate of public convenience and pay the corresponding fee." The brief likewise distinguishes our statute from other statutes which were declared unconstitutional "because such statutes converted the parties affected into common carriers when in truth and in fact they were not". It is further stated in respondents' brief, page 6, referring to the omission of the phrase "for public use" in Act No. 3B16:

"This means that under the new law it is not necessary that the petitioner herein maintains and operates its trucks 'for public use' in order that the respondent Public Service Commission can assume jurisdiction and control over them. It is enough that it maintains and operates them 'for hire or compensation' in whatever manner or form. Public use of use by the public is no longer a requisite under the new law. 'Hire or compensation' is all that is necessary. That, we submit, is the intention of the Legislature by amending section 13 of Act No. 3108 by section 6 of Act No. 3316."

Eliminating therefore as contrary to the facts agreed upon the contention that the respondents may now take jurisdiction over the petitioner's business because it is a common carrier, we pass to the consideration of the question whether the amendments introduced into section 13 of Act No. 3108 by Act No. 3316 conferred jurisdiction on the respondents over the petitioner's business, although it is not a common carrier.

The respondents rely on the changes in the wording of section 13 of Act No. 3108 made by Act No. 3316. Section 13, as amended, reads as follows:

"The Commission shall have general supervision and regulation of, jurisdiction and control over, all public services, and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the purposes of carrying out the provisions of this Act. The term "public service" is hereby defined to include every individual, copartnership, association, corporation, or joint-stock company, whether domestic or foreign, their lessees, trustees, or receivers appointed by any court whatsoever, or any municipality, province, or other department of the Government of the Philippine Islands, that now or hereafter may own, operate, manage, or control within the Philippine Islands, for hire or compensation, any common carrier, railroad, street railway, traction railway, subway, freight and or passenger motor vehicles, with or without fixed route, freight or any other car service, express service, steamboat or steamship line, ferries, small water craft, such as lighters, pontines, lorchas, and others, engaged in the transportation of passengers or cargo, shipyard, marine railway, marine repair shop, public warehouse, public wharf or dock not under the jurisdiction of the Insular Collector of Customs, ice, refrigeration, canal, irrigation, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, wire or wireless telegraph system, plant or equipment: Provided, That as regards such common carriers, by land or by water, whose equipment is used principally or secondarily in furtherance of their private business, the net earnings of the latter business shall be considered in connection with their common carrier business for the purposes of rate fixing: Provided, further, That the Commission shall have no jurisdiction over ice plants, cold storage plants, or any of the other services above mentioned, operated by the Federal Government exclusively for its own use and not to serve private persons for pay or compensation, nor over animal-drawn carts or ferries below two tons engaged principally in carrying freights."

The material amendments of section 13 of Act No. 3108, made by Act No. 3316, are the following: The term "public service" is substituted for the term "public utility" and the phrase "for public use" is eliminated and the phrase "for hire or compensation" is inserted in the definition of a public service. In view of these changes in the definition of a "public service", the respondents contend that any person who operates a freight and or passenger motor vehicle with or without fixed route, for hire or compensation, is now subject to the supervision, regulation, jurisdiction and control of the Public Service Commission and must comply with all the provisions of the Public

Service Law. It is contended that if the businesses enumerated in section 13 are carried on for "hire or compensation", that is all that is necessary to subject them to the supervision, regulation and control of the commission. We cannot accept the view that the Legislature intended such a sweeping change in the law by the verbal changes made in section 13.

The mere omission from section 13 of the phrase "for public use" in the definition of a public service does not seem to us to warrant the inference that the Legislature meant to extend the jurisdiction of the Public Service Commission to private enterprises not devoted to public use. The idea of public use is implicit in the term "public service". A public service is a service for public use. The insertion of the phrase "for hire or compensation" throws no light on whether the Legislature intended to include private businesses in the definition of a public service. This is a stock phrase found in most definitions of a common carrier and a public utility.

It is of special significance that notwithstanding the changes in the wording of the definition of the term "public service" introduced by Act No. 3316, there were no alterations whatever made in the basic provisions of sections 14, 15, 16, 17, 18, 19, 20, 21 and 22 of Act No. 3108. The fact that these basic provisions were drafted with relation to common carriers and that no amendment of them was made to adapt them to private carriers like the petitioner clearly indicates that the Legislature, in the verbal amendments made by Act No. 3316 in section 13, did not contemplate the radical change which would discard the element of public use as an essential feature of every public service. Had the Legislature intended to bring under the jurisdiction of the Public Service Commission enterprises not operated for public use, it would not have left these enterprises to guess their way through a statute applicable to public utilities, at their peril and with "no standard of conduct that it was possible to know". Indeed, a serious "doubt would arise whether we should not be obliged to hold a statute void pro tanto for uncertainty, which attempted to subject private carriers to the identical requirements and penalties to which the statute and the commission's regulations subject common carriers; and we cannot assume that the Legislature intended to leave such a cloud upon the statute. (Cf. *Smith vs. Cahoon*, 283 U. S., 553, 564; and *Continental Baking Company vs. Woodring*, 76 L. ed., 816, 822.)

In arriving at the conclusion that it was not the intention of the Legislature, in making the verbal changes in section 13 of Act No. 3108 above indicated, to enlarge the supervision, regulation and control of the Public Service Commission so as to include businesses like that described in the agreed statement of facts, we do not mean to intimate that it would be beyond the power of the Legislature to do so by appropriate language. Our view of the case renders unnecessary the consideration of the constitutional questions presented at great length in the memoranda of the petitioner and the respondents.

The writ of prohibition will be granted as prayed for, each party to bear its own costs. So ordered.

Street, Malcolm, Ostrand, Abad Santos, and Hull, JJ., concur.

DISSENTING

VICKBRS, J., with whom concur VILLAMOR, VILLA-REAL, and IMPERIAL, JJ. :

I cannot assent to the conclusion of the majority that if the petitioner is subject to the jurisdiction of the Public Service Commission it is by reason of the last amendment to the law, because heretofore no attempt has been made to exercise any control over the business of the petitioner. If the law conferred upon the Public Service Commission jurisdiction over the petitioner that jurisdiction was not affected by the failure of the commission to exercise it.

The decision of the majority of the court is predicated upon the finding that the petitioner is not a common carrier.

One's first impression on reading the agreed statement of facts is that the Attorney-General has stipulated himself out of court. I am constrained to think, however, that although the petitioner may not appear to be a common carrier in the usual acceptance of that term, said company is a common carrier in a restricted sense, and therefore within the statute. The petitioner is a customs broker, and clears through the customhouse the goods of any importer desiring to make use of petitioner's services. Once the goods are cleared through the customs, petitioner's services as a broker are terminated. The petitioner then holds itself out as ready for an additional sum to transport the importer's goods by motor trucks to their destination.

Obviously, it cannot be maintained with any show of reason that the petitioner is not a common carrier because it does not engage in the indiscriminate hauling of goods for the general public, but restricts its business to the transportation of goods from the piers to their destination, or vice versa. Going one step further, I think that the petitioner is a common carrier in a restricted sense even if it be true that the petitioner hauls only the goods of those persons that have availed themselves of petitioner's services as a customs broker. The transportation of the goods of an exporter or importer to or from the piers is no part of the business of a customs broker. It is agreed that the petitioner maintains a fleet of trucks for use in its transportation business. It is obvious therefore that the petitioner furnishes transportation facilities for a considerable number of importers and exporters; that its business is affected with a public interest and is a public service. Neither the fact that petitioner's business is restricted to a particular class of persons nor the fact that the petitioner makes an agreement in each case as to its charges prevents the petitioner from being a common carrier. Not one of the decisions discussed in the written argument of petitioner's able and industrious counsel is directly in point. The facts of those cases differ materially from the facts of the present case. The petitioner is not engaged in hauling the goods of one man over the streets of Manila under a formal contract, but the petitioner is employing a fleet of trucks to transport the goods of a certain class of persons, that is, the persons who have made use of plaintiff's services as a customs broker, and as to all such persons the petitioner holds itself out as ready and willing to transport their goods for a consideration separate and distinct from petitioner's fees as a customs broker.

For the foregoing reasons, the petition ought to be denied.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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