

LA PAZ ICE PLANT & COLD STORAGE CO., INC., PLAINTIFF AND APPELLEE, VS. JOHN BORDMAN AND ILOILO COMMERCIAL & ICE CO., DEFENDANTS AND APPELLANTS.*G.R. No. 43668. March 31, 1938*

Ponente: IMPERIAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-43668/>**IMPERIAL, J.:**

The plaintiff commenced this action to enjoin the defendants from continuing to exploit the ice factory which they have established in the City of Iloilo, Province of Iloilo, because they have not provided themselves with the certificate of public convenience required by Act No. 3108 and its amendments. The defendants appealed from the decision making permanent the writ of preliminary injunction which was issued therein, prohibiting them from continuing to exploit the said ice factory, but holding that the said injunction will be lifted as soon as the defendants obtain the corresponding certificate of public convenience from the Public Service Commission.

In the amended complaint it was alleged that the defendants were operating the ice factory, established in the City of Iloilo, without having a certificate of public convenience thereby engaging in ruinous competition with the plaintiff resulting in an alleged daily loss of P50 in its business consisting in another ice factory, situated in the municipality of La Paz of the same province. In their answer the defendants denied each and every material allegation of the amended complaint and interposed the special defense that the Public Service Commission had neither jurisdiction nor control over their ice factory and that the part of Act No. 3108 and its amendments requiring that the defendant corporation be provided with a certificate of public convenience to operate an ice plant is unconstitutional and void. In counterclaim they alleged that the preliminary injunction issued was obtained by the plaintiff without any justification, as a result of which they suffered and continue to suffer damages which they asked the court that they be permitted to prove in the proceeding, but after the decision is rendered.

In 1908, Iloilo Ice & Cold Storage Co. established the ice plant in the City of Iloilo and sold its products by means of tickets to a limited number of consumers. In 1923 the corporation changed its name and then became known as the Iloilo Commercial & Ice Co. Since then it began to sell its products to the general public and, upon agreement entered into with the manager of the plaintiff, it was selling the ice produced by its factory at the same price as that of the latter entity having established its factory prior to the enforcement of Act No. 3108, which went into effect on March 19, 1923, and believing that the business does not come under the jurisdiction or authority of the Public Service Commission, the defendants did not provide themselves with a certificate of public convenience. The plaintiff is the operator of another ice plant established in the municipality of La Paz, provided with a certificate of public convenience No 11282, with authority to sell ice in the municipalities of Iloilo, La Paz and Jaro. The plaintiff required the defendants to provide themselves with a certificate of public convenience to avoid ruinous competition between both factories, but they refused to do so and to submit to the jurisdiction and authority of the Public Service Commission.

- The defendants contend in their first assigned error that the court erred in not holding Act No. 3108, as amended, unconstitutional and void, in so far as it requires a certificate of public convenience to engage in a lawful business or when a property is devoted to the public service. The provisions of said law bearing upon the question at issue are the following:

"Sec. 13. The Commission shall have general supervision and regulation of, jurisdiction and control over, all public utilities, 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 utility' 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 any common carrier, railroad, street railway, traction railway, steamboat or steamship line, small water craft, such as bancas, virays, lorchas, and others, engaged in the transportation of passengers or cargo, freight and or passenger motor vehicles, with or without fixed route shipyard, marine railway, marine repair shop, ferry, freight or any other car service, public warehouse, public wharf or dock not under the jurisdiction of the Insular Collector of Customs, ice, refrigeration, cold storage, canal, irrigation, express, subway, pipe line, gas, electric light, heat, power, water, oil, sewer, telephone, wire or wireless telegraph system, plant or equipment, for public use: 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 other kind of public utilities operated by the Federal Government exclusively for its own and not for public use: And provided, lastly, That the Public Utility Commission shall not exercise any control or supervision over the Manila Railroad Company so long as the same shall be controlled by the Government of the Philippine Islands, except with regard to its rates.

* * * * *

"Art. 15. * * *

"(i) No public utility as herein denned shall operate in the Philippine Islands without having first secured from the Commission a certificate, which shall be known as Certificate of Public Convenience, to the effect that the operation of said public utility and the authorization to do business will promote the public interests in a proper and suitable manner. Every public utility existing on the date of the approval of this Act shall pay the fees herein prescribed for the issuance of the proper certificate of public convenience or public necessity and convenience, as the case may be, in the same manner as said fees shall be payable by any new public utility subject to the provisions of this Act, within Sixty days from the date of the approval of this Act: Provided, however, That in the case of a public utility for the operation of whose business it is necessary to obtain a franchise from either a municipal government, or a provincial government, under the provisions of Act Numbered Six hundred and sixty-seven, as amended by Act Numbered Ten hundred and twenty-two, or from the Philippine Legislature, such public utility shall secure a certificate to be known as Certificate of Public Necessity and Convenience, as required by section twenty-two of this Act. The duty to secure such certificates of public convenience or certificates of public necessity and convenience by public utilities or to pay the fees herein prescribed by public utilities already existing is of a mandatory character and noncompliance herewith may, in the judgment of the Public Utility Commission, be sufficient ground for the revocation and cancellation of any vested right and for the imposition of the penalty provided for in this Act."

The first question to be determined is whether said Act No. 3108, as amended, should be applied to the present

case, notwithstanding the enactment of Commonwealth Act No. 146 which took effect on November 7, 1936.

While section 46 of Commonwealth Act No. 146 expressly repeals Act No. 3108 and its amendments, nowhere does it provide that it has retroactive effect. In the absence of any express provision to this effect, the general rule should prevail that laws do not have retroactive effect, unless otherwise expressly provided. "Retrospective or retroactive legislation is not favored. Hence, it is a well-settled and fundamental rule of statutory construction, variously stated, that all statutes are to be construed as having only a prospective operation, and not as operating retrospectively. It is equally well-settled as a fundamental rule of statutory construction supported and established by numerous judicial decisions that statutes are not to be construed as having a retroactive effect." (59 C. J., sec. 692, pp. 1159-1162; U. S. vs. Magnolia Petroleum Co., 276 U. S., 160; U. S. vs. St. Louis, S. F. & T. Ry Co., 270 U. S., 1; Burden, Smith & Co. vs. U. S., 32 F. [2d], 830; Warner vs. Walsh, 27 F. [2d], 952; U. S. vs. Russell, 22 F. [2d], 249; Conklin vs. United States, 21 F. [2d], 141; United States vs. United Shoe Machinery Co., 264 F., 138; U. S. vs. Atchison, etc., R. Co., 142 F., 176; Hathaway vs. New York Mut. L. Ins. Co., 99 F., 534; Northwestern Mut. Life Ins. Co. vs. Seaman, 80 F., 357/359; Humboldt Lumber Manufacturers' Assoc. vs. Christopherson, 73 F., 239; In re Billings, 3 F. Cas. No. 1,408; Shecnck vs. Peay, 21 Cas. No. 12,450; Uckenbach S. S. Co. vs. U. S., 66 Ct. Cl., 679; Penick & Ford vs. United States, 12 Cust. App., 218.) And this rule is the more applicable to the present case because the defendants have acquired rights under the former law which should be protected. "Retroactive legislation changing rights is not favored, and the rule that statutes are not to be construed retrospectively unless such construction was plainly intended by the legislature applies with peculiar force. Hence, in so far as affecting vested rights, a statute will be construed as prospective only, and not as operating retrospectively or retroactively, unless that intention is made manifest either by express word³ or by a clear, distinct, necessary, plain, strong, unmistakable, implication." (59 C. J., sec. 696, pp. 1171, 1172; Forsyth vs. Marbury, R. M. Charlt. [Ga.], 324; Davidson vs. Gaston, 16 Minn., 230; Bunk vs. Knight, 187 N. Y. S., 747; In re Frost's Estate, 175 N. Y. S., 723; Hester & Roberts vs. Donna Irr. Dist., Hidalgo County, No. 1, 239 S. W., 992; School Corporation of Andrews vs. Heiney, 98 N. E., 628; City of Chicago vs. Collin, 134 N. E., 751; American Surety Co. of New York vs. Axtell Co., 36 S. W. [2d], 715; Chew Heong vs. U. S., 112 U. S., 536; Barrington vs. Barrington, 76 So., 81.) We, therefore, hold that Commonwealth Act No. 146 is not applicable to the present case, and that the defendants' rights, in connection with the certificate of public convenience for the ice factory operated by them, should be governed by Act No. 3108, as amended.

The next question which we have to answer is whether the defendants are under a duty to provide themselves with a certificate of public convenience in order to continue operating the ice factory which they have in the City of Iloilo.

In the case of Iloilo Ice and Cold Storage Company vs. Public Utility Board (decided on March 2, 1923, 44 Phil., 551 et seq.), we said that under the established facts and circumstances the defendants' ice factory was not then a public utility because it was not an enterprise devoted to the public. But the proven facts in the case before us now conclusively show that the aforesaid factory, after the said decision was promulgated, has been converted into a public service because, as the defendant Bordman himself admitted, the ice which it produces is sold to the public for a compensation and for a price which for sometime has been the same as that which the plaintiff charged for the ice which it produced.

Subsection (i) of section 15 of Act No. 3108 as amended by section 2 of Act No. 4033, contains an exception providing that public services existing before its approval, instead of providing themselves with a certificate of public convenience or with a certificate of public necessity and convenience, as the case may be, shall only pay the fees fixed by law for the issuance of said certificates. The factory operated by the defendants is within the purview of the proviso, and under the law, it is not under a duty to provide itself with a certificate of public

convenience, but only to pay the required fees for the issuance of said certificate. We, therefore, hold that the defendants are not bound to provide themselves with a certificate of public convenience to continue operating their ice plant, but they should pay within a reasonable time the fees required for said certificate.

The foregoing should not be interpreted to mean that the defendants are not subject to the jurisdiction and authority of the Public Service Commission. After paying the aforesaid fees the commission shall issue to them the corresponding certificate of public convenience, which may be regulated, modified or cancelled for just cause, and in its operation and exploitation the defendants' factory shall be subject to the jurisdiction and authority of the commission, like any new enterprise, in accordance with the provisions of Commonwealth Act No. 146.

The defendants invoke in support of their contention that Act No. 3108 and its amendments are unconstitutional and void the doctrine enunciated by the Supreme Court of the United States in the case of *New State Ice Company vs. Liebman* (285 U. S., 262 et seq.), wherein it was held that the manufacture of ice is a private business in the State of Oklahoma, for which reason it is not subject to the jurisdiction and authority of the Public Utility Commission. We have carefully read the decision rendered in the said case and we hold that the facts supporting the legal conclusions laid down therein are entirely distinct from those found established in the present case. Under our law and the facts admitted by the defendants in this case the ice factory which the defendants operate is a public service because the ice it produces is sold to the general public for a price by way of compensation.

- In view of what has been said, it would be profitless to discuss the second assignment of error, wherein the defendants allege that the plaintiff has not brought the present suit with clean hands.

- The defendants insist in their third and last assignment of error that the court erred in not holding the plaintiff liable for damages caused by the unjustified issuance of the preliminary injunction which to date is in force.

Resolving this point, we hold that the injunction was issued for a just cause because it is established and admitted by the defendants themselves that they operated their ice plant without paying the fees required by law, payment which should have been made within sixty days following the approval of the law.

For the foregoing reasons, the appealed decision is reversed, and it is ordered that the defendants, within thirty days from notice of this decision, pay to the Public Service Commission the fees fixed by law for the issuance of the certificate of public convenience for their factory, and that upon such payment the commission issue to them the certificate of public convenience; provided, however, that the defendant Iloilo Commercial & Ice Co., as operator of the public service which it exploits, is subject to the jurisdiction and authority of the Public Service Commission. After the defendant corporation has obtained the certificate of public convenience, the preliminary injunction which has been issued shall be cancelled as well as the bond filed by the plaintiff; without special pronouncement as to the costs in this instance. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Diaz, Laurel, and Concepcion, JJ., concur.

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.