

MANILA ELECTRIC COMPANY, PLAINTIFF AND APPELLEE, VS. PASAY TRANSPORTATION COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 45169. November 19, 1938

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

The defendant, Pasay Transportation Company, appeals to this court from a decision of the Court of First Instance of Manila, the dispositive part of which reads:

"For the foregoing considerations, the court hereby renders judgment and

"(1) Orders the defendant company to pay to the plaintiff the total sum of two thousand seven hundred sixty-six pesos and eighty centavos (P2,766.80), with interest at six per centum (6%) per annum from the date of the filing of the complaint, August 14, 1934, until fully paid;

"(2) Orders the defendant company to render an accounting to the plaintiff company, within thirty days from the date this decision should become final, of the number of times the trucks of the defendant company passed over the bridge of the plaintiff company from August, 1934, and after the rendition of such accounting, to pay the plaintiff company a compensation equivalent to forty centavos (P0.40) for each time the trucks of the defendant company passed over the bridge of the plaintiff company, until the date of the rendition of accounts;

"(3) Orders the defendant company to pay to the plaintiff company the sum of forty centavos (P0.40) for each time the trucks of the former should pass over the bridge of the latter in the future, after the rendition of accounts;

"(4) Prohibits the defendant company, its manager, agents, representatives, and employees henceforward from making the trucks of the defendant company pass over the bridge of the plaintiff company referred to in the complaint, unless they pay to the latter the sum of forty centavos (P0.40) for each time that its trucks should pass over the bridge or should reach an agreement on the matter with the plaintiff company; and

"(5) Orders the defendant company to pay the costs.

"The provincial sheriff of Rizal is hereby ordered to serve a copy of this decision on the manager of the defendant company. So ordered."

In support of its appeal, the appellant assigns four errors allegedly committed by the trial court in its aforesaid decision, which alleged errors will be discussed in the course of this decision.

At the opening of the trial of the case, the parties submitted to the court for its decision the following stipulation of facts:

"The parties hereto agree to stipulate as follows:

"I. That the allegations contained in paragraphs I, II, III, and IV of the complaint are true and correct.

"II. That the said franchise has, with the consent of the Governor-General and the municipal authorities of the

City of Manila, of the municipality of Pasig, and of the municipality of Makati, been assigned and transferred to plaintiff, who has been the lawful holder thereof, entitled to all of the rights and privileges granted thereunder, at all times material to this action.

"III. That said Manila Suburban Railways Company did construct at its own expense, a bridge over the Pasig River as provided in section one of the said franchise; that the said bridge has at all times up to 1932, been maintained jointly as in the franchise provided by the municipality of Pasig and the respective holders of the franchise, and as since 1932 been maintained jointly as in the franchise provided by the Province of Rizal and plaintiff; and that plaintiff, and its predecessors have acquired at their own expense, and own, the land right of way on which the said bridge is constructed. The parties may submit further evidence on the points covered by this paragraph and defendant reserves the right to verify plaintiffs title to the land. (That Exhibit 1 is a statement or expenditure incurred by the Province of Rizal in the repair and maintenance of the bridge in question from April 6, 1932 to June 22, 1932, as aforesaid.)

"IV. That the defendant commenced operating a motor bus route for the transportation of passengers between the City of Manila and the municipality of Pasig over the aforesaid bridge, under the certificate of public convenience (Public Service Commission case No. 18081 and case No. 18085), in February, 1929; that plaintiff has at all times protested against the granting of the said certificates of public convenience and against the operation of defendant thereunder. The respective records of the Public Service Commission are incorporated herein by reference.

"V. That on June 29, 1932, the plaintiff petitioned the justices of the Supreme Court of the Philippine Islands requesting that they sit as a board of arbitrators as provided in section 11 of said franchise, and determine the terms on which defendant and other operators of motor bus routes could use the said bridge; that opposition to the granting of this petition was filed by defendant and other operators of motor bus routes; that on November 25, 1932, the Supreme Court denied plaintiff's petition, and on December 13, 1932, denied plaintiffs motion for reconsideration; that plaintiff filed notice of its intention to take a petition of certiorari to the Supreme Court of the United States; that on the 31st day of March, 1933, the clerk of the Supreme Court of the Philippine Islands certified the printed transcript of record, and that plaintiff has presented no petition in the Supreme Court of the United States as aforesaid, the time for filing the said petition having expired on September 30, 1933.

"VI. That on the 29th day of May, 1934, plaintiff sent to defendant the letter attached hereto as Exhibit 2, which defendant answered by the letter attached hereto as Exhibit 3. That checkers employed by plaintiff, if called, would testify that the period from the first day of June, 1934, to the 31st day of July, 1934, motor busses operated by defendant under the aforesaid certificates of public convenience made the number of trips over the aforesaid bridge set forth in the following table:

1.

During the month of June 3464

2.

During the month of July 3453

"Defendant reserves the right to verify the number of trips made as aforesaid.

"VII. That on the 6th day of July, 1934, plaintiff sent to defendant the bill, a copy of which is attached hereto as Exhibit 4; that on or about the 14th day of August, 1934, plaintiff sent to defendant the bill, a copy of which is attached hereto as Exhibit 5; and that defendant does refuse, and at all times has refused, to pay the said bills.

"VIII. That Felix Reifschneider and L. L. Gardner, witnesses for plaintiff, would, if called, testify from their personal knowledge that the rate of toll of forty centavos per trip was arrived at on the basis of the

computations set forth in the table attached hereto as Exhibit 6, and that the figures from which the said computations are made are true and correct; without prejudice to the contention of defendant that no toll is chargeable, to defendants contending that after refusal of the Supreme Court of the Philippine Islands to sit as arbitrators according to the provisions of section 11 of the said franchise, no other person or entity is allowed by law to fix the terms on which the said bridge can be used; and to defendant's contention that the said tolls are unreasonable and against public interest.

"IX. That eleven other operators besides defendant use the said bridge.

"X. That Exhibits 7 and 8 are pictures of the aforesaid bridge. The 'X' on Exhibit 7 marks the portion of the said bridge used by defendant, by other bus lines, from time to time at irregular intervals by charter busses of plaintiff, operated under a permit of the Public Service Commission (cases Nos. 17280 and 17400) and by the general public, that plaintiff has, on February 25, 1933, applied for a certificate of public convenience to operate a bus lines over the portion of the said bridge marked by an 'A' on Exhibit 7 (case No. 35524) the said application not having been acted on up to this time, and that the 'Z' on Exhibit 7 marks the portion of the said bridge used by street cars operated by plaintiff. That the parties may prepare and attach to this record such portions of the record of the Public Service Commission, also such records of the Supreme Court in connection with G. R. No. 37878, In re Petition to have the Honorable Supreme Court sit as Board of Arbitrators for the purpose of fixing compensation as claimed by the Manila Electric Company for the use of the public portion of the bridge, as they shall deem proper.

"XI. This stipulation is equally the work of both parties and shall be interpreted so as to give effect to the intention of the parties that this case shall be decided solely upon the points of law involved.

"Manila, P. I., February 1935."

The principal question to be determined, in view of the aforequoted statement of facts, is whether or not by virtue of the franchise granted to Charles M. Swift on January 30, 1906 by Act No. 1446 of the Philippine Commission, and transferred to the herein plaintiff and appellee, Manila Electric Company, the latter has a right to collect tolls from the herein defendant and appellant, Pasay Transportation Company, every time its cars pass over the bridge which said grantee has constructed across the Pasig River pursuant to the aforesaid franchise.

Sections 1 and 11 of the aforesaid franchise Act No. 1446 provide as follows:

"Section 1. A franchise is hereby granted to Charles M. Swift to construct, maintain, and operate an electric railroad, either double or single track (with the exceptions hereinafter set forth), with the necessary sidings and turnouts, and to construct, maintain, and operate an electric light, heat, and power system along the line of said railroad and on all the streets and thoroughfares in the town of Pasig, which railroad shall begin at any point along Calle Real, Paco, Manila, between Calle Nozaleda and the San Pedro Macati Road, thence along the San Pedro Macati Road to a point opposite what is known as the English cemetery, and thence in an easterly direction, by private right of way, or license, to be acquired by the grantee, to the town of Pasig, in the Province of Rizal, and to such point in said town as may be agreed upon between the municipal authorities of Pasig and the grantee, and approved by the provincial board of the province, or, in case of failure to agree, then to such terminal point as may be determined upon by the Philippine Commission, crossing the Pasig River at or near the present Pasig ferry on a steel bridge to be constructed by the grantee in accordance with plans to be approved by the Director of Public Works; or on a private right of way the entire route, beginning at any point on the line of the road of the Manila Electric Railroad and Light Company on Calle Real, Paco, between Calle Nozaleda and the San Pedro Macati road and running in an easterly direction, crossing the Pasig River at the point and in the manner above provided, or, at the election of the said grantee, on a private right of way the entire route, beginning at any point on the Malate line of the Manila Electric Railroad and Light Company south of the bridge across the estero at Fort San Antonio de Abad, and running in an easterly direction, across the Pasig River at the point and in the manner above provided, with the privilege in any case of connecting the

said road with the present line of the Manila Electric Railroad and Light Company: Provided, That the bridge across the Pasig River above authorized shall be so constructed as to permit of its use as a wagon and foot bridge by the general public, and the general public shall be entitled to use said bridge as though the same were a public bridge without the payment of any fee or toll for said use. The grantee shall construct the bridge complete for his use and for the use of the public as above provided and shall thereafter keep in good and safe repair that portion of the bridge between the outer rail and the side of the bridge, that portion between the rails, and that portion eighteen inches outside the inner rail. The remainder of the floor of the bridge shall be kept in repair by the municipality of Pasig.

* * * * *

"SEC. 11. Whenever any franchise or right of way is granted to any other person or corporation, now or hereafter in existence, over portions of the lines and tracks of the grantee herein, the terms on which said other person or corporation shall use such right of way, and the compensation to be paid to the grantee herein by such other person or corporation for said use, shall be fixed by the members of the Supreme Court, sitting as a board of arbitrators, the decision of a majority of whom shall be final."

It is seen from the provisions of section 1 of the franchise Act No. 1446, above quoted, that Charles M. Swift was authorized, as part of his franchise, to construct across the Pasig River, at or near the ferry then existing, a steel bridge, with plans to be approved by the Director of Public Works, in such a way that a portion thereof may be used by the public in general, as a wagon and foot bridge, as though the same were a public bridge, without paying fees of any kind, the grantee being chargeable with keeping in good and safe repair the part of the said bridge between the outer rail and the side of the bridge, that portion between the rails, and that portion .eighteen inches outside the inner rail, and the municipality of Pasig shall keep in repair the remainder of the floor of the said bridge. Pursuant to section 11, also above quoted, the grantee may charge compensation when any privilege or right of way is granted to any other person or corporation to make use of a part of the lines or tracks of the grantee.

It is not contended that the Pasay Transportation Company had obtained any privilege or right of way to make use of a part of the lines or tracks of the plaintiff, nor that its trucks pass over said lines or tracks; consequently the latter cannot invoke its franchise to collect tolls from the defendant for the said trucks which pass over the aforesaid bridge in the portion set apart for the public in general. The right to collect tolls from the public for passing over a public bridge exists only by virtue of law (9 Corpus Juris, page 447, sec. 33); so that the portion of the bridge here in question, set apart for the use of the general public, for wagons and travellers, who are not under a duty to pay fees of any kind, partakes of a public nature as provided by the franchise Act No. 1446 itself, which the plaintiff and appellee, Manila Electric Company, invokes, wherefore, it has no right to collect tolls from the defendant and appellant, Pasay Transportation Company, for the passage by its passenger trucks over the said portion set apart for public use and which the municipality of Pasig is under a duty to maintain in good shape and repair, inasmuch as, as we have said, its franchise does not authorize such collection.

For the foregoing considerations, we are of the opinion, and so hold, that the possessor of a franchise granted by law, to construct a bridge as a part of its electric railway system, a portion of which is set apart for its own use and the other portion for the use of the general public, for wagons and travellers, free from the payment of fees of any kind, the grantee being charged with the conservation and repair of the first portion, and the municipality where the bridge is constructed being charged with the conservation and repair of the floor of the other portion, has no right to collect any toll from a land transportation operator for the passage of its passenger trucks, unless it is authorized by its franchise to make such collection.

Wherefore, the appealed decision is reversed, and the defendant and appellant, Pasay Transportation Company, is

absolved from the complaint, with the costs to the appellee. So ordered.

Avanceña, C. J., Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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