

MANILA ELECTRIC COMPANY, PLAINTIFF AND APPELLANT, vs. A. L. YATCO, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.*G.R No. 45697. November 01, 1939*

Ponente: MORAN, J.

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In 1935, plaintiff Manila Electric Company, a corporation organized and existing under the laws of the Philippines, with its principal office and place of business in the City of Manila, insured with the City of New York Insurance Company and the United States Guaranty Company, certain real and personal properties situated in the Philippines. The insurance was entered into in behalf of said plaintiff by its broker in New York City. The insurance companies are foreign corporations not licensed to do business in the Philippines and having no agents therein. The policies contained provisions for the settlement and payment of losses upon the occurrence of any risk insured against, a sample of which is policy No. 20 of the New York Insurance Company attached to and made an integral part of the agreed statement of facts.

Plaintiff through its broker paid, in New York, to said insurance company premiums in the sum of P91,696. The Collector of Internal Revenue, under the authority of section 192 of Act No. 2427, as amended, assessed and levied a tax of one per centum on said premiums, which plaintiff paid under protest. The protest having been overruled, plaintiff instituted the present action to recover the tax. The trial court dismissed the complaint, and from the judgment thus rendered, plaintiff took the instant appeal.

The pertinent portions of the Act here involved read:

"Sec. 192. It shall be unlawful for any person, company or corporation in the Philippine Islands either to procure, receive, or forward applications for insurance in or to issue or to deliver or accept policies of or for any company or companies not having been legally authorized to transact business in the Philippine Islands, as provided in the chapter; and any such person, company or corporation violating the provisions of this section shall be deemed guilty of a penal offense, and upon conviction thereof, shall for each such offense be punished by a fine of two hundred pesos, or imprisonment for two months, or both in the discretion of the court: Provided, That insurance in companies not authorized to transact business in the Philippine Islands may be placed upon terms and conditions 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 premium paid, in the manner required by law of insurance companies, and shall be subject to the same penalties for failure to do so."

Appellant maintains that the second paragraph of the provisions of the Act aforecited is unconstitutional, and has been so declared by the Supreme Court of the United States in the case of *Compania General de Tabacos v. Collector of Internal Revenue*, 275 U. S., 87, 48 Sup. Ct. Rep., 100, 72 Law. ed., 177.

The case relied upon involves a suit to recover from the Collector of Internal Revenue certain taxes in connection with insurance premiums which the Tobacco Company in the Philippines, through its head office in Barcelona, Spain, paid to the Guardian Insurance Company of London, England, and to Le Comite des Assurances Maritimes de Paris, of Paris, France. The Tobacco Company, through its head office in Barcelona, insured against fire with the London Company the merchandise it had in deposit in the warehouse in the Philippines. As the merchandise were from time to time shipped to Europe, the head office at Barcelona insured the same with the Paris Company against marine risks while such merchandise were in transit from the Philippines to Spain. The London Company, unlike the Paris Company, was licensed to do insurance business in the Philippines and had an agent therein. Losses, if any, on policies were to be paid to the Tobacco Company by the London Company in London and by the Paris Company in Paris. The tax assessed and levied by the Collector of Internal Revenue, under the same law now involved, was challenged as unconstitutional. The Supreme Court of the United States sustained the tax with respect to premiums paid to the London Company and held it erroneous with respect to premiums paid to the Paris Company.

The factual basis upon which the imposition of the tax on premiums paid to the Paris Company was declared erroneous, is stated by the Supreme Court of the United States thus:

"Coming then to the tax on the premiums paid to the Paris Company the contract of insurance on which the premium was paid was made at Barcelona in Spain, the headquarters of the Tobacco Company between the Tobacco Company and the Paris Company, and any losses arising thereunder were to be paid in Paris. The Paris Company had no communication whatever with anyone in the Philippine Islands. The collection of this tax involves an exaction upon a company of Spain lawfully doing business in the Philippine Islands effected by reason of a contract made by that company with a company in Paris on merchandise shipped from the Philippine Islands for delivery in Barcelona. It is an imposition upon a contract not made in the Philippines and having no situs there and to be measured by money paid as premium in Paris, with the place of payment of loss, if any, in Paris. We are very clear that the contract and the premiums paid under it are not within the jurisdiction of the government of the Philippine Islands."

And, upon the authority of the cases of *Allgeyer v. Louisiana*, 165 U. S., 578, 41 Law. ed., 832, and *St. Louis Cotton Compress Company v. Arkansas*, 250 U. S., 346, 677 Law. ed., 279, the Supreme Court of the United States held that "as the state is forbidden to deprive a person of his liberty without due process of law, it may not compel anyone within its jurisdiction to pay tribute to it for contracts or money paid to secure the benefits of contracts made and to be performed outside of the state."

On the other hand, the Supreme Court of the United States, in sustaining the imposition of the tax upon premiums paid by the assured to the London Company, says:

"* * *. Does the fact that while the Tobacco Company and the London Company were within the jurisdiction of the Philippines they made a contract outside of the Philippines for the insurance of merchandise in the Philippines, prevent the imposition upon the assured of a tax of 1 per cent upon the money paid by it as a premium to the London Company? We may properly assume that this tax placed upon the assured must ultimately be paid by the insurer, and treating its real incidence as such, the question arises whether making and carrying out the policy does not involve an exercise or use of the right of the London Company to do business in the Philippine Islands under its license, because the policy covers fire risks on property within the Philippine Islands which may require adjustment and the activities of agents in the Philippine Islands with respect to settlement of losses arising thereunder. This we think must be answered affirmatively under

Equitable Life Assur. Soc. v. Pennsylvania, 238 U. S., 143 Law. ed., 1239, 35 Sup. Ct. Rep., 829. The case is a close one, but in deference to the conclusion we reached in the latter case, we affirm the judgment of the court below in respect to the tax upon the premium paid to the London Company."

The ruling in the Paris Company case is obviously not applicable in the instant one, for there, not only was the contract executed in a foreign country, but the merchandise insured was in transit from the Philippines to Spain, and nothing was to be done in the Philippines in pursuance of the contract. However, the rule laid down in connection with the London Company may, by analogy, be applied in the present case, the essential facts of both cases being similar. Here, the insured is a corporation organized under the laws of the Philippines, its principal office and place of business being in the City of Manila. The New York Insurance Company and the United States Guaranty Company may be said to be doing business in the Philippines because the insurance policies issued by them cover risks on properties within the Philippines, which may require adjustment and the activities of agents in the Philippines with respect to the settlement of losses arising thereunder. For instance, it is therein stipulated that "the insured, as often as may be reasonably required, shall exhibit to any person designated by the company all the remains of any property therein described and submit to examination under oath by any person named by the company, and as often as may be reasonably required shall produce for examination all books of accounts * * * at such reasonable time and place as may be designated by the company or its representative." And, in case of disagreement as to the amount of losses or damages as to require the appointment of appraisers, the insurance contract provides that "the appraisers shall first select a competent umpire; and failing for fifteen days to agree to such umpire, then, on request of the insured or of the company, such umpire shall be selected by a judge of the court of record in the state in which the property insured is located."

True it is that the London Company had a license to do business in the Philippines, but this fact was not a decisive factor in the decision of that case, for reliance was therein placed on the Equitable Life Assurance Society v. Pennsylvania, 238 U. S., 143, 59 Law. ed., 1239, 35 Sup. Ct. Rep., 829, wherein it was said that "the Equitable Society was doing business in Pennsylvania when it was annually paying dividends in Pennsylvania or sending an adjuster into the state in case of dispute or making proof of death," and therefore "the taxpayer had subjected itself to the jurisdiction of Pennsylvania in doing business there." (See *Compañía General de Tabacos v. Collector of Internal Revenue*, 275 U. S., 87, 72 Law. ed., 177, 182.)

The controlling consideration, therefore, in the decision of the London Company case was that said company, by making and carrying out policies covering risks located in this country which might require adjustment or the making of proof of loss therein, did business in the Philippines and subjected itself to its jurisdiction, a rule that can perfectly be applied in the present case to the New York Insurance Company and the United States Guaranty Company.

It is argued, however, that the sending of an adjuster to the Philippines to fix the amount of losses, is a mere contingency and not an actual fact, and as such, it cannot be a ground for holding that the insurance companies subjected themselves to the taxing jurisdiction of the Philippines. This argument could have been made in the London Company case where no adjuster appears to have ever been sent to the Philippines nor any adjustment ever made, and yet the stipulations to that effect were held to be sufficient to bring the foreign corporation within the taxing jurisdiction of the Philippines.

In epitome, then, the whole question involved in this appeal is whether or not the disputed tax is one imposed by the Commonwealth of the Philippines upon a contract beyond its jurisdiction. We are of the opinion and so hold that where the insured is within the Philippines, the risk insured against also within the Philippines, and certain incidents of the contract are to be attended to in the Philippines, such as, payment of dividends when received in cash, sending of an adjuster into the Philippines in case of dispute, or making of proof of loss, the Commonwealth

of the Philippines has the power to impose the tax upon the insured, regardless of whether the contract is executed in a foreign country and with a foreign corporation. Under such circumstances, substantial elements of the contract may be said to be so situated in the Philippines as to give its government the power to tax. And, even if it be assumed that the tax imposed upon the insured will ultimately be passed on to the insurer, thus constituting an indirect tax upon the foreign corporation, it would still be valid, because the foreign corporation, by the stipulations of its contract, has subjected itself to the taxing jurisdiction of the Philippines. After all, the Commonwealth of the Philippines, by protecting the properties insured, benefits the foreign corporation, and it is but reasonable that the latter should pay a just contribution therefor. It would certainly be a discrimination against domestic corporations to hold the tax valid when the policy is given by them and invalid when issued by foreign corporations.

Judgment is affirmed, with costs against appellant.

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

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