

45 Phil. 384

[G.R. No. 20780. November 09, 1923]

**BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS.
WENCESLAO TRINIDAD, AS COLLECTOR OF INTERNAL REVENUE, DEFENDANT
AND APPELLEE.**

D E C I S I O N

STATEMENT

The plaintiff is a domestic banking corporation, with its principal office and place of business in the City of Manila, operating under a special charter granted by the Philippine Legislature, known as Act No. 1790.

The defendant is the duly appointed, qualified, and acting Collector of Internal Revenue of the Philippine Islands.

For cause of action, plaintiff alleges that article 26 of its Charter provides:

“The bank shall be held to renounce all claim to the exclusive privilege of issuing notes in the Philippine Islands, or to any other exclusive privilege not set forth in this Act; but no laws or regulations shall be made or enforced affecting the bank, or imposing charges or taxation upon it, which shall not apply equally to other banks of a similar type operating under similar conditions, and no bank shall be authorized to issue circulating notes in the Philippine Islands with a paid-up capital less than two million pesos; but this provision shall not preclude the Government from granting special privileges to agricultural banks, savings banks, mortgage banks, or other institutions of special types whose principal business is not commercial

banking.”

That after it was granted by Act No. 2612 on February 4, 1916, the Legislature of the Philippine Islands granted a charter to the Philippine National Bank, by section 18 of which authority is given the bank to issue circulating notes, and that in such section it was provided that:

“* * * Said circulating notes shall be exempt from any and all taxes levied or assessed by the Philippine Government, or any department, division or subdivision thereof.”

That, through the Collector of Internal Revenue, the Government has always claimed and exercised the right to collect from the plaintiff internal revenue taxes upon its circulating notes issued by the plaintiff under the authority of its charter for one-twelfth of one per cent upon the average amount of its circulation, and compelled the plaintiff to pay such taxes, and that it has paid such taxes; that the enactment of the provisions of article 26 above quoted was in violation of the contract entered into between the plaintiff and the Philippine Government; that the defendant has not collected taxes upon the circulation of the Philippine National Bank, and that, by reason of the fact above stated, the plaintiff was and is entitled to the same exemptions and privileges as the Philippine National Bank, it being a bank of similar type and operating under similar conditions; that the defendant wrongfully and unlawfully demanded and collected from the plaintiff upon its circulation the following sums upon the following dates, to wit:

“On October 27, 1919, the sum	
of	P15,170.7 2
On April 30, 1920, the sum	
of	20,884.75
On October 30, 1920, the sum	
of	22,415.58
On April 30, 1921, the sum	
of	22,460.00

On October 31, 1921, the
sum
of

	22,458.56
	<hr/>
	103,389.6 "
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That the interest upon such taxes from the time of the filing of the complaint amounts to P5,728.32; that each year the plaintiff paid the taxes under protest, and that demand therefor has been made and payment refused.

Wherefore, the plaintiff prays judgment against the defendant for the sum of P109,117.93, with interest from November 1, 1921, with costs.

December 21, 1921, the defendant filed a demurrer to the complaint upon the ground that it did not state facts sufficient to constitute a cause of action.

After arguments, the lower court sustained the demurrer, from which the plaintiff appealed to this Court.

In an opinion written by Mr. Justice Johnson, to which three members dissented, the judgment of the lower court was reversed,^[1] and remanded with leave to the defendant to answer.

The defendant, without waiving the legal point raised in his demurrer, then filed an answer, admitting the formal part of the complaint, and alleging the collection of the taxes as alleged, and specifically denies all of the other material allegations of the complaint, and, as a special defense, alleges:

- (a) That the plaintiff is a private corporation organized for private purposes, and is exclusively owned and managed by private interest; and that the Philippine National Bank is a Government institution established to promote the public interests and welfare of the Government, which owned more than one-half of the capital stock, and which has supervision and control over the bank;
- (b) that the plaintiff is not a bank of similar type operating under similar conditions to the National Bank, nor is it entitled to the same exemptions and privileges as the National Bank;
- (c) that at the time the

taxes mentioned in the first paragraph were paid by the plaintiff, Act No. 2612 of the Philippine Legislature was no longer in force, and that it was amended and superseded by Acts Nos. 2747 and 2938; that under the provisions of section 14 of Act No. 2747 and section 15 of Act No. 2938, the circulating notes of the Philippine National Bank, with the exception of those issued against gold coin of the United States, are not exempt from taxes, and the defendant has heretofore levied and collected the taxes due on the circulating notes of the National Bank; that the plaintiff has no note circulation issued against gold coin of the United States, and the circulating notes upon which the taxes were paid were of the same kind and type on which the National Bank was paying taxes; that Acts Nos. 2747 and 2938 are not laws or regulations affecting the plaintiff bank or imposing charges or taxation upon it; (d) that the plaintiff paid the taxes voluntarily without any compulsion or demand by the defendant; (e) that the charter of the plaintiff bank has not in any way been violated, and that the taxes paid by the plaintiff were legally due the Government.

It is then alleged that the action to recover the taxes paid on October 27, 1919, is barred by the statute of limitations.

Upon such issues, the parties entered into the following stipulation of facts:

“It is hereby stipulated and agreed by and between the parties hereto that the following facts are true and that the same may be used upon trial with the same force and effect as though given as evidence before the court:

“That the plaintiff is a domestic corporation, as alleged in the complaint, organized for a private end and benefit and operating under Act No. 1790 of the Philippine Commission with its outstanding capital stock owned by private individuals and corporations;

“That the activities of the plaintiff and the business done by it is such as permitted and set forth in said Act No. 1790;

“That the Philippine National Bank is a banking corporation organized under Acts Nos. 2612, 2747, and 2938 of said Legislature;

“That 92 per cent of its outstanding capital stock is owned by the Government of the Philippine Islands and 8 per cent by individuals and corporations;

“That the activities and business of said Philippine National Bank are such as are permitted and set forth in said last above-mentioned acts;

“That the payment of taxes upon its circulation made by the plaintiff, alleged by the complaint and admitted by the defendant in his answer, were made under due and timely protest, but without any compulsion or previous demand from the defendant, and such payments were made to avoid payment of penalties in case of non-payment;

“That heretofore and on the 9th day of March, 1922, and after the beginning of this action, the defendant made demand upon the Philippine National Bank for the payment of taxes under its circulation;

“That the amount of said circulation issued under Act No. 2924 from October 7, 1919, to October 31, 1921, was P10,926,300, as is more fully shown by Exhibit A attached hereto and made a part hereof;

“That the amount of circulation issued against its capital stock by said Philippine National Bank from October 7, 1919, to October 31, 1921, was P19,299,500, as is more fully shown by Exhibit B attached hereto and made a part hereof;

“That heretofore and on the 15th day of July, 1922, the said Philippine National Bank paid the defendant as taxes upon its circulations shown in Exhibit B, the sum of P519,043.03; and on the 2d day of August, 1922, said bank paid the defendant further the sum of P129,760.77, being 25 per cent surcharge upon the taxes paid as last above-mentioned ; that the Philippine National Bank has not since its organization issued any circulating notes against gold coin of the United States held in the bank’s own vault or to its order in the Treasury of the Philippine Islands or of the United States or in solvent National Banks of the United States or in any Federal Reserve Bank thereof;

“That both of said payments were made under due and timely protest and that the Board of Directors of the said Philippine National Bank has resolved to bring an action against the defendant for the recovery of said sums if the Secretary of Justice, to whom the matter has been referred for advice, should, in his capacity as ex-officio attorney for the Bank, approve of such action;

“That the payments made by the Philippine National Bank of taxes on its circulation are more fully shown in Exhibit C which is attached hereto and made a part hereof;

“That plaintiff’s action was filed in Court on November 1, 1921;

“That on January 28, 1922, the Attorney-General of the Philippine Islands rendered an opinion on the taxability of the circulating notes of the Philippine National Bank, a copy of which will be submitted to the Court by defendant.”

The plaintiff also offered the oral testimony of two witnesses as experts in the knowledge of banking, for the purpose of showing that the two banks were of similar type and operating under similar conditions, to which offer the defendant objected, and the objection was sustained.

Upon such issues and the stipulated facts, the lower court rendered judgment for the defendant, from which the plaintiff appeals, contending that the court erred in rejecting the testimony of the two witnesses as to the similarity of the banks; “in finding that the statement of agreed facts submitted by the parties admitted that ‘on the other hand, the Philippine National Bank was created to promote the general interests of the country, etc.’; in finding that said agreed statement of facts admitted ‘That, in accordance with the law, the Philippine National Bank pays the corresponding tax upon notes put in circulation, etc.’ and omitting the facts as set forth in said statement in that regard; in finding that section 18 of Act No. 2612 contains a provision that does not affect plaintiff but refers exclusively to the Philippine National Bank;” in finding the law to be as stated in the dissenting opinion upon the demurrer in the former appeal; in finding that because the Philippine National Bank paid taxes upon its circulating notes, plaintiff’s cause of action was not proven; and in rendering judgment for the

defendant.

^[1] Bank of the Philippine Islands

vs. Trinidad, G. R. No. 18747, promulgated September 23, 1922, not reported.

JOHNS, J.:

The Banco Español Filipino was incorporated under a charter granted by the Kingdom of Spain by which certain rights and privileges were conferred upon it, and specially that of the exclusive right of issuing and circulating notes of the bank to an amount equal to three times of its capital stock. After the Treaty of Paris, a dispute arose between the bank and the Government authorities as to the powers, rights and privileges of the bank under its then charter, resulting in the enactment of Act No. 1790 by the Philippine Commission October 12, 1907, in and by which certain rights and privileges under the Spanish charter were surrendered and the powers of the bank were specifically defined, and article 26 above quoted, upon which the plaintiff now relies, was then enacted.

By the terms of the Act, the corporate name of the bank was changed to that of Bank of the Philippine Islands.

This was followed by Act No. 2612 of the Philippine Legislature creating what is known as the Philippine National Bank, in and by which, under section 18 thereof, it is provided that the circulating notes of that bank “shall be exempt from any and all taxes levied or assessed by the Philippine Government, or any department, division or subdivision thereof.”

Plaintiff contends that the Philippine National Bank is a bank of a similar type to it, and that it is operated under similar conditions, and that the exemption in favor of the Philippine National Bank under section 18 of its charter, was in violation of, and is in direct conflict with, the provisions of article 26 of plaintiff’s charter. It will be noted that section 18 above quoted further provides for the issuance of circulating notes, specifying the amount, the redemption of securities, and that—

“The said securities described in section eleven and the proceeds thereof shall be held inviolable for the payment and redemption of said circulating notes. Said circulating notes shall be engraved and shall be payable on demand to the bearer in lawful money of the Philippine Islands. There shall at all times be held by said bank a sum not less than thirty-three and one-third per cent of the total amount of said circulating notes outstanding in lawful money of the Philippine Islands. Said sum shall be available only for the purpose of redeeming the circulating notes herein provided for.”

February 20, 1918, the Legislature of the Philippine Islands passed Act No. 2747, entitled:

“An Act to amend in certain particulars Act Numbered Twenty-six hundred and twelve, entitled ‘An Act creating the Philippine National Bank.’
“

Section 48 of which provides that—

“All Acts or parts of Acts inconsistent or incompatible with the provisions of this Act are hereby repealed.”

Section 15 of Act No. 2747 provides for the issuance of circulating notes, and further—

“There shall at all times be held by said National Bank a sum not less than thirty-three and one-third per cent of the total amount of said circulating notes issued and outstanding and not covered by gold coin of the United States as herein provided for in lawful money of the Philippine Islands.

* * * * *
* *

“It is hereby further provided that in addition to the circulating notes above provided for, said National Bank shall have authority to issue its

circulating notes against gold coin of the United States to the full value thereof: *Provided, however,* That such gold coin against which circulating notes have been issued shall be held by said bank and used for no other purpose except the redemption of said circulating notes. The said bank, however, shall have the privilege of redeeming said circulating notes in any lawful money of the Philippine Islands. Such circulating notes shall be exempt from any and all taxes levied or assessed by the Philippine Government, or any department, division or subdivision thereof.

“The said circulating notes shall be receivable by the Philippine Government in payment of all taxes, dues or other claims due or owing to said Government, and shall be redeemed by the bank on demand, in lawful money * *

*.”

January 30, 1921, the Philippine Legislature enacted Act No. 2938, entitled:

“An Act to amend Act Numbered Twenty-six hundred and twelve, entitled ‘An Act creating the Philippine National Bank,’ as amended by Act Numbered Twenty-seven hundred and forty-seven.”

The provisions of section 14 of Act No. 2938, as to circulating notes and exemption from taxation, are identical with the provisions of section 15 above quoted of Act No. 2747.

Both Acts Nos. 2747 and 2938 expressly provide:

“That in addition to the circulating notes above provided for, said National Bank shall have authority to issue its circulating notes against gold coin of the United States to the full value thereof: *Provided, however,* That such gold coin against which circulating notes have been issued shall be held by said Bank and used for no other purpose except the redemption of said circulating notes. The said bank, however, shall have the privilege of redeeming said circulating notes in any lawful money of the Philippine Islands. Such

circulating notes shall be exempt from any and all taxes levied or assessed by the Philippine Government, or any department, division or subdivision thereof." And there is no provision in Act No. 2612 for the issuance of circulating notes of the bank "against gold coin of the United States to the full value thereof," or that "such gold coin against which circulating notes have been issued shall be held by said bank and used for no other purpose except the redemption of said circulating notes."

Assuming, without deciding, that, in so far as it exempts the Philippine National Bank from certain taxes, Act No. 2612 is in conflict with plaintiff's charter, such exemption provisions are left out of both Acts Nos. 2747 and 2938. That is to say, that, as to the question of exemption from taxation, there is no provision in either Act No. 2747 or Act No. 2938, which is in conflict with the provisions of plaintiff's charter. The conflict, if any, which did exist ceased to exist on February 20, 1918, when Act No. 2747 became a law.

Under the stipulated facts, among others, it is agreed:

"That the Philippine National Bank has not since its organization issued any circulating notes against gold coin of the United States held in the Bank's own vault or to its order in the Treasury of the Philippine Islands or of the United States or in solvent National Banks of the United States or in any Federal Reserve Bank thereof."

As the Attorney-General points out, all of the taxes here involved, and which the plaintiff now seeks to recover, accrued and were paid after Act No. 2747 became a law, and upon the question here presented Acts Nos. 2747 and 2938 are identical.

It appears in the Act itself that Act No. 1790, granting the plaintiff its charter, was in the nature of a compromise of conflicting claims and rights, and plaintiff's cause of action is founded upon the theory that it is a contract between it and the Government, and that Act No. 2612, incorporating the Philippine National Bank, was a violation of that contract.

Assuming that to be true, and that at the time Act No. 2612 became a law it

had a just cause of grievance, the treatment of which it now complains arose and the taxes, which it now seeks to recover, accrued after Act No. 2612 was amended and repealed by Act No. 2747. For such reason, its alleged grievance comes under, and must be construed by, the terms and provisions of Act No. 2747. In other words, plaintiff's cause of action is founded upon an alleged breach of contract arising from, and growing out of, the granting of a charter to the Philippine National Bank by Act No. 2612, which contains the provisions above quoted, and the legislative records show that Act No. 2612 was amended and repealed by Act No. 2747, and that the last Act became the law of the land on February 20, 1918, and that the payment of the taxes, of which plaintiff now complains, accrued on and after October 27, 1919.

It is further contended that prior to the time this action was commenced, the Philippine National Bank had not paid or been requested to pay any tax upon its circulating notes, and, for such reasons, the plaintiff is entitled to the refund of the taxes which it has paid upon its circulating notes. The taxes in question were levied and assessed under section 1499 of the Administrative Code of 1917, which, among other things, provides:

“SEC. 1499. Tax on capital, deposits, and circulation of banks.—Subject to the exemptions herein made there shall be collected from banks the following taxes on capital, deposits, and circulation:

* * * * *
 * *

“(c) Upon the average amount of circulation issued by the bank, including as circulation all notes and other obligations calculated or intended to circulate or be used as money, but not including such as may be retained in the vault of the bank or redeemed and on deposit for said bank, for each month, one-twelfth of one per centum.”

The section itself defines the meaning of the word “bank,” as follows:

“Includes every incorporated or other bank, and every person, association, or company having a place of business where credits are opened by the deposit or

collection of money or currency subject to be paid or remitted upon draft, check, or order, or where money is advanced or loaned on stocks, bonds, bullion, bills of exchange, or promissory notes are received for discount or for sale.”

It must be conceded that, unless otherwise exempt, the plaintiff comes under the terms and provisions of that section.

The fact that one person may not have paid or been required to pay his taxes does not exempt another from the payment of his legal taxes, or legally entitle him to a refund of any taxes which he has paid.

In the final analysis, plaintiff’s cause of action is founded upon an alleged breach of contract, and the breach, if any, which plaintiff alleges, did not exist at the time the plaintiff paid the taxes, which it now seeks to recover.

Again, it appears from the stipulation of facts that after this action was commenced, and on the 15th day of July, 1922, the Philippine National Bank, under protest, paid the defendant the sum of P519,043.03 as taxes upon its circulation, and that on the 2d of August, 1922, it paid the further sum of P129,760.77, the amount of the 25 per cent surcharge upon such taxes. Although such taxes were paid under protest in and by which the legal rights, if any, of the Philippine National Bank were fully protected, the fact remains that the defendant demanded the payment of such taxes from that bank, and that it paid such taxes, and that in the absence of proof or allegation, this court has no right to assume that the demand for payment was not made in good faith, or that it was not founded upon a legal right.

Under this view, it is not necessary to decide the question as to whether the plaintiff and the Philippine National Bank are of a “similar type” or operated “under similar conditions.”

From what has been said, it follows that the judgment of the lower court must be affirmed. Neither party to recover costs. So ordered.

Malcolm,

Avanceña, Villamor, and Romualdez, JJ., concur.
Johnson,
J., dissents.

CONCURRING

STREET, J.:

I am of the opinion that the clause in the charter of the Bank of the Philippine Islands to the effect that no law shall be made or enforced imposing a charge or taxation upon said bank which shall not apply equally to other banks of a similar type operating under similar conditions has all the sanctity of a contract or solemn treaty; and, so far as this clause is concerned, I am of the opinion that the Philippine National Bank is a bank of similar type to that of the Bank of the Philippine Islands and operating under similar conditions. From this it must follow that any subsequent law passed by the Philippine Legislature, conferring upon the Philippine National Bank the privilege of issuing tax-exempt notes for circulation as money, must have the effect of exonerating the Bank of the Philippine Islands from the burden of paying taxes upon its circulating notes to the same extent.

If therefore the Bank of the Philippine Islands were to issue circulating notes against gold coin of the United States held by the bank for no other purpose than their redemption, such notes would undoubtedly be tax-exempt. But it does not appear that the Bank of the Philippine Islands has issued any such notes. On the contrary it is to be assumed that the circulating notes upon which the appellant bank has been taxed were issued against its capital or against securities deposited with the Treasurer of the Philippine Islands as contemplated in Article XXIV of its Charter (Act No. 1790). The circumstance that the Philippine National Bank has been granted the privilege of issuing tax-exempt notes against gold coin held in deposit upon trust for their redemption does not exonerate the appellant bank wholly from tax liability upon all of its issue but only from tax liability upon such notes as might be issued against gold coin similarly held. The charter

provision upon which the appellant bank relies secures to it equal privileges only, not better privileges than those conferred upon other banks.

Date created: June 10, 2014