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The Status of Foreign Corporations in the Philippines

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INTRODUCTION

During the last two years the Philippine Legislature has seen it fit to direct its attention against the restrictive provisions of Act No. 1459, otherwise known as the Corporation Law and its amendments. This law was enacted in 1906 by the Philippine Commission and as such there is no gainsaying the fact that some of its provisions after the lapse of more than two decades needed some sort of an overhauling as our Legislature has recently done. Law, as some writers say, is a cultural phenomenon and therefore it must march hand in hand with the progress of the country, hence the justification of the present amendments. The work of the Philippine Legislature is indeed very commendable but much as we wish absolute perfection in all our endeavors the realization of that wish is very remote for it is a fact known to all that absolute perfection is not accomplished by any amount of human labor.

Such is the predicament of our present Corporation Law in spite of the amendments to it. It is the product of mortal minds and it is therefore far from perfect. There are still many wide gaps in it which should be bridged in order to attain if possible the purposes for which it was enacted. One of the most important of these gaps is the subject of the present writing.

DEFINITION AND CONCEPT OF CORPORATIONS

A corporation is defined as "a body, consisting of one or more natural persons, established by law, usually for some specific purpose, and continued by succession of members." Another definition is "an artificial person created by law and

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composed of individuals who subsist as a body politic under a special denomination with the capacity of perpetual succession and of acting within the scope of its charter as a natural person." (Bouvier's Law Dictionary). Our own law on corporations, Act No. 1459, defines a corporation as "an artificial being created by operation of law, having the right of succession and the powers, attributes, and properties expressly authorized by law or incident to its existence." (Section 2, Act No. 1459) As may be seen from the above definitions, corporations in general include public corporations which are exclusively instruments of public interest as well as private corporations which are created wholly or in part for purposes of private emolument.

The present study, however, deals with the status of foreign corporations in the Philippine Islands and their rights and obligations taken in the light of the provisions of our Corporation Law regarding them. A foreign corporation as a class of private corporations may therefore be defined as "a corporation created by the laws of some other state or country. The term has been held to include not only corporations organized in foreign states or countries but also associations in foreign countries having the attributes of corporations though the statutes of the country where they are organized especially declare that they shall not be considered corporations." *Liverpool Insurance Co. vs. Massachussetts*, 19 L. Ed. 1029. And according to the doctrine laid down in the case of *Adams Express Co. vs. Denver and C. R. Co.* (16 Fed. 912), corporations created by the territories of the United States are foreign corporations with respect to the other states and territories. Our own corporation law does not give a definition of a foreign corporation but we can deduce from Section 68 of the law that all corporations formed, organized, or existing under any laws other than those of the Philippine Islands are foreign corporations.

In the Philippine Islands, especially in the city of Manila, corporations, both domestic and foreign, abound in great numbers. The domestic ones are created and formed in accordance with the general provisions of our corporation law and as long as the provisions are followed there is little or no question at all about them. The provisions regarding them do not concern us in this writing and, therefore, they do not need to be commented upon here. We are presently concerned with foreign corporations and their status in the Philippine Islands. Sections 68 to 73 of our corporation law deal exclusively with them. They

are the be-all and the end-all of foreign corporations in the Philippine Islands. Noncompliance with these provisions does not create any status nor rights and obligations on the part of a foreign corporation wishing to establish itself in this country. For a foreign corporation, compliance with them is necessary and indispensable in order to create a juridical status recognized in the courts of the Philippine Islands and acquire rights and obligations just like any domestic corporation.

STATUS OF FOREIGN CORPORATIONS IN GENERAL

On reading the provisions of any corporation law of any country or state, one will not escape notice of the fact that there are always provisions set aside for foreign corporations in the law. The advanced stage of present-day commercial and trade relations among nations and the different countries of the world accounts for this. In the United States, even the different states of the Union have embodied in their corporation laws provisions governing foreign corporations which apply to corporations formed and created in other countries as well as to corporations formed and created in any of the states in the American Union wishing to establish themselves in any of the states other than the home-state of such corporations. The explanation of this phenomenon is concisely given in *Corpus Juris* (vol. 24, p. 1215) as follows: "A foreign corporation can have no legal existence beyond the bounds of the state or sovereignty by which it is created. It exists only in contemplation of law and by force of law, and where that law ceases to operate, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty. The principle does not prevent a corporation from acting in another state or country with the latter's consent expressed or implied. But every power which a corporation exercises as such in another state depends for its validity upon the laws of the sovereignty in which it is exercised. A state cannot impose one of its artificial creatures on another sovereignty nor confer upon its corporations powers which they cannot lawfully exercise beyond its jurisdiction. A corporation can exercise none of the functions and privileges conferred by its charter in any other state or country except by the comity and consent of such state or country."

Corporations formed and created in another state or sovereignty can, however, exercise their powers in another state or sovereignty in two ways:

(1) By state comity;

(2) By compliance with conditions precedent prescribed by domestic laws.

(1) The term comity needs to be defined and explained. By comity in general is meant "courtesy or a disposition to accommodate as when courts of justice in one state will, out of comity, enforce the laws of another state, when by such enforcement they will not violate their own laws or inflict an injury on some one of their own citizens." (Cyclopedic Law Dictionary). Under this definition of comity, a corporation is permitted to enter a state other than its home-state for the purpose of doing all legitimate acts conferred to it by its charter. It can exercise any business not prohibited by the local laws or against the local public policy. But this principle of comity cannot disregard local restrictions by the local legislature. The legislature of any state can disregard the principle of comity altogether by proper legislation. In the absence of specific legislation to this effect, comity is presumed to exist unless it can be shown otherwise by the public policy of the state from the general course of legislation or the settled adjudications of its courts of last resort. These limitations to comity are universally recognized and they must be held paramount to the general principle itself. "The law of comity is a part of the common law and the courts give it effect that they give to any other rule of the common law. A corporation is a mere creature of law and has no existence and can do no act beyond the limits of the state or country by which it was created, except through the principle of comity. But this principle extends to and is enforced by the courts in every nation and every state of the Union until destroyed by the law-making power,—". This quoted excerpt from Thompson on Corporations (Vol. 5, p. 1417) recognizes the existing power of the legislature to wipe out altogether or destroy the common law right of comity by specific legislation to this effect.

(2) The second way by which a foreign corporation may exercise its power in another state, is by compliance with the conditions precedent prescribed by the domestic laws. *Corpus Juris* (Vol. 24, p. 1240) contains the following regarding the matter:

"The powers of a foreign corporation are limited not only by its charter and the laws of the State which created it but also by the laws of the State in which it exercises its powers; * * * A corporation which seeks to establish a

business domicile in a state other than that of its creation must take that domicile as individuals are always understood to do, subject to the responsibilities and burdens imposed by the laws which it finds in force there. It becomes amenable to the laws of the latter state and to the process of its courts, upon the same principle, and to the same extent as natural persons or domestic corporations * * * A license or permit to do business within the state granted to a foreign corporation does not absolve it from subjection to the local laws. Whether or not the corporation has such license or permit, its transactions within the state are subject to the laws of the State."

Statutes which give authority to foreign corporations to do business within the state and which prescribe the terms and conditions upon which they shall be permitted to do so have been almost universally adopted. Also subject to constitutional limitations only, a state has the right entirely to prohibit foreign corporations from doing business within its borders and suing in the local courts of such a state. Having such a power, the state can prohibit the transaction of a business by a foreign corporation within the state without first complying with the conditions precedent in order to do business and the restrictions which the state may see fit to impose. In the United States, the only limitations among the states in the exercise of this power of restriction are two:

(1) The first is that the restriction does not apply to corporations engaged in interstate or foreign commerce because under the Constitution of the United States the power to regulate such is vested in Congress to the exclusion of the several states. But the fact that a corporation is engaged in interstate or foreign commerce does not exempt it from the control of the state with respect to its strictly intra-state business.

(2) The second exception to the rule of restriction refers to federal agencies and instrumentalities which are doing business authorized to be done within a state by constitutional acts of Congress. They cannot be prohibited or regulated by the state where they are found.

Aside from the above set-forth constitutional limitations to the power of restriction, we see that the states are given an almost plenary power over the question of admitting or not admitting, and prescribing the terms and conditions upon which foreign corporations may be allowed to do business or to do any act of business within their jurisdiction. A state can exact

upon such corporations, as a condition precedent to their being admitted within the state, license fees or taxes. It can require them to file a copy of their charters or certificates of incorporation with the secretary of state or some other officer or officers. It can require them to take out a license, permit or certificate as a condition precedent to the right to do business within the state or to acquire a legal personality to sue in its courts.

From the foregoing paragraphs, it is shown that a state has the almost plenary power to prohibit or restrict under certain conditions the right or privilege of foreign corporations to enter into business within its borders. Now, does the mere license to do business in a certain state carry with it the right also to sue in its courts? "Generally a foreign corporation may maintain an action in a state or country other than that of its creation, in the same manner and as freely as other suitors where it has power to do so under its charter, and is not prohibited from exercising such power by the laws of the state in which it attempts to sue. Thus in the absence of such a prohibition, a foreign corporation may sue either in law or equity upon contracts entered into by it either in the state or elsewhere and generally it is entitled to whatever remedy is accorded to a domestic creditor for the collection of a debt due for goods sold and delivered, with priority payment according to the priority of its execution, although it may have no office in the state of the forum where service can be had upon it." (Direct U. S. Cable Co. vs. Dominion Telephone Co., 84 N. Y. 153.) In the *Sioux Remedy Co. vs. Cape*, (28 S. D. 397) it was further held: "The statutes of some other states expressly preclude the maintenance of actions in the courts of the state by a foreign corporation until it has complied with certain requirements, regardless of whether it is doing business in the state or not." It is provided by some statutes that no foreign corporation which has failed to comply with the requirements imposed can maintain any suit or action, either legal or equitable in any of the courts of the state on any demand whether arising out of contract or tort. (*St. Avit vs. Kettle River Co.*, 216 Fed. 872.) Now, as it can be seen from numerous decisions, a few of which are being cited above, the right of a foreign corporation to do business within a state carries with it also the right to sue and be sued for contracts made in the course of business in its courts. A different question would, however, arise were the question phrased or worded in this way: Can a state prohibit or restrict

under certain conditions a foreign corporation not licensed to do business within it to sue in its courts to enforce its contracts? Here comity comes in again as in the case of the right to transact business but with the same limitations that if a statute provides for certain restrictions, these restrictions must govern for the existence of statutory provisions in favor of restriction as long as they are constitutional destroy or put in the background the principle of state comity. The answer then to the question is very obvious. A foreign corporation therefore which is prohibited or has not complied with the conditions precedent to transact business within a state if there are express provisions to this effect cannot sue in its courts.

THE JURIDICAL STANDING OF FOREIGN CORPORATIONS IN THE P. I.

As has already been touched upon, in the Philippines there are numerous foreign corporations actually engaged and doing business especially in Manila and the other big towns. In fact, the greater part of the large-scale business in the Islands is handled by them. These corporations are branches of corporations from jurisdictions other than that of the Philippine Islands. And having been established and granted charters elsewhere, naturally, when they come to the Philippine Islands they must conform to the laws regarding them here.

Sections 68, 69, 70, 71, 72, and 73 are the only provisions pertinent to foreign corporations in our Corporation Law. Section 68 provides: "No foreign corporation or corporations formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands until after it shall have obtained a license for that purpose from the Chief of the Mercantile Register of the Bureau of Commerce and Industry, upon order of the Secretary of Finance in case of banks, savings and loan banks, trust corporations, and banking institutions of all kinds, and upon order of the Secretary of Commerce and Communications in case of all other foreign corporations. No order for a license shall be issued by either of said secretaries except upon a statement under oath of the managing agent of the corporation showing to the satisfaction of the proper secretary that the corporation is solvent and in sound financial condition, and setting forth the resources and liabilities of the corporation within a reasonable number of days to be fixed by the Secretary of Finance, or the Secretary of Commerce and Communications,

as the case may be, prior to the date of presenting the statement as follows:

- (1) The name of the corporation;
- (2) The purpose for which it was organized;
- (3) The location of its principal or home office;
- (4) The capital stock of the corporation and the amount actually subscribed and paid into the treasury on the
(Here insert date, month, year)
- (5) The net assets of the corporation over and above all debts, liabilities, obligations, and claims outstanding against it on the
(Date, month, year)

(6) The name of an agent residing in the Philippine Islands authorized by the corporation to accept service of summons and process in all legal proceedings against the corporation and of all notices affecting the corporation: Provided, however, that the Secretary of Finance or the Secretary of Commerce and Communications as the case may be, before ordering that a license be issued in the case of any particular corporation, may require further evidence of the solvency and fair dealing of the corporation if in his discretion such further information is essential.

“Upon filing in the Mercantile Register of the Bureau of Commerce and Industry the said statement, a certified copy of its charter and the order of the Secretary of Finance or of the Secretary of Commerce and Communications, as the case may be, for the issuance of a license, the Chief of the said register shall issue to the foreign corporation as directed in the order a license to do business in the Philippine Islands and for the issuance of said license the chief of the said register shall collect a fee in proportion to the corporate capital of each corporation, to be fixed in accordance with the schedule established in Section 8 of this Act.” Section 69 provides: “No foreign corporation or corporations, formed, organized, or existing under any laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands or maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding. Any officers, director, or agent of the corporation or any person transacting business for any foreign corporation not having the license prescribed shall be punished by imprisonment for not less than

six months nor more than two years or by a fine of not less than ₱200 nor more than ₱1,000, or by both such imprisonment and fine, in the discretion of the court."

As can be gleaned from the above provisions quoted in full above, foreign corporations cannot transact business or sue in the courts of the Philippine Islands without first complying with the conditions provided for therein. Exemptions from complying with these provisions, are however provided for in Act 1659 amending Sections 68 to 71 of Act No. 1459, by foreign corporations operating at the time of the passage of Act No. 1459 under especial franchise granted by the Philippine Commission. The corporations so exempted shall however comply with certain requirements not very unlike the conditions provided for in Sections 68 and 69 for the purpose of giving them the right to continue exercising the powers already acquired by them before the passage of Act No. 1459. Of especial import also in our law is the fact that penalty is imposed on those officers, directors or agents of foreign corporations transacting business here without having the license prescribed for them. Provisions of similar tenor as the provisions of our law regarding foreign corporations can be found in many of the statutes of many of the different states comprising the American Union. (U. S. Rubber Co. vs. Butter Bros Shoe Co., 132 Fed. 398; Sioux Remedy Co. vs. Cope, 28 S. D. 397)

It is already known as a general principle that the right to transact business by a foreign corporation in a state after compliance with the statutory provisions of that state carries with it the right to sue in its court to enforce rights and obligations in connection with the business transacted. Now, the all-important question arises: Can a foreign corporation without having acquired the license required in Section 68 sue in the courts of the Philippine Islands to recover any debt, claim or any demand whatever? Section 69 provides in part: "No foreign corporation formed, organized, or existing under the laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands *or* maintain by itself or assignee any suit for the recovery of any debt, claim or demand whatever unless it shall have the license prescribed in the section immediately preceding * * *" There can be no other logical construction of this provision but that the transacting of business or the maintaining by itself or assignee of any suit requires the taking out of a license. There can only be two cases then for the proper application of this provision.

(1) The first case is when the license is required in order to transact business. And when a corporation is licensed to transact business, naturally, it acquires juridical personality in our courts and sue or be sued upon just the same as any domestic corporation. (2) The second case is when a foreign corporation not being licensed to transact business here, wishes to sue in our courts for the recovery of any debt, claim or demand whatever. In this case also a license is required according to the law.

The only important decision so far which puts this very provision to test is that penned by Justice Malcolm when the case of *Marshall Wells Co. vs. Henry W. Elser & Co. Inc.* (46 Phil. 70), was decided by the Philippine Supreme Court in banc on September 1, 1924. The facts of the case as reported are as follows: "Marshall Wells Co., an Oregon corporation, sued the defendant, a domestic corporation in the Court of First Instance of Manila, for the unpaid balance on a bill of goods amounting to P2,660.74, sold by the plaintiff to defendant and for which plaintiff holds accepted drafts. Defendant demurred to the complaint on the statutory ground that the plaintiff has not legal capacity to sue. In the demurrer, counsel stated that the said complaint does not show that the plaintiff has complied with the laws of the Philippine Islands in that which is required of foreign corporations desiring to do business in the Philippine Islands neither does it show that it was authorized to do business in the Philippine Islands. Demurrer sustained by the judge. Inasmuch as plaintiff could not allege compliance with the statute, the order was allowed to become final and an appeal was perfected."

The question at issue was: Is the obtaining of the license prescribed in Section 68 as amended, a condition precedent to the maintaining of any kind of action in the courts of the Philippine Islands by a foreign corporation? The Supreme Court was inclined to answer and, in fact, answered this question in the negative as can be seen from the following excerpt of the decision:

"Corporations have no legal status beyond the bounds of the sovereignty by which they are created. A state may restrict the right of a foreign corporation to engage in business within its limits, and to sue in its courts. But by virtue of state comity, a corporation created by the laws of one state is usually allowed to transact business in other state and to sue in the courts of the forum. (Paul vs. Virginia, (1869) 8 Wal. 169;

Sioux Remedy Co. vs. Cope and Cope, (1914) 235 U. S. 197; Cyclone Mining Co. vs. Baker Light & Power Co., (1908) 165 Fed. 996.)

“Defendant isolates a portion of one sentence of Section 69 of the Corporation Law and asks the court to give it a literal meaning. Counsel would have the law read thus: ‘No foreign corporation shall be permitted to maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribe in Section 68 of the law.’ Plaintiff on the contrary, desires for the court to consider the particular point under discussion with reference to all the law, and thereafter to give the law a common sense interpretation.

“The object of the statute was to subject the foreign corporation doing business in the Philippine Islands to the jurisdiction of its courts. The object of the statute was not to prevent the foreign corporation from performing single acts, but to prevent it from acquiring a domicile for the purpose of business without taking the steps necessary to render it amenable to suits in the local courts. The implication of the law is that it was never the purpose of the Legislature to exclude a foreign corporation which happens to obtain an isolated order for business from the Philippines, from securing redress in the Philippine courts; and thus in effect, to permit persons to avoid their contracts made with such foreign corporations. The effect of the statute preventing foreign corporation doing business and from bringing actions in the local courts, except on compliance with elaborate requirements, must not be unduly extended or improperly applied * * *”

Then the Supreme Court concluded: “Confronted with the option of giving to the Corporation Law a harsh interpretation, which would disastrously embarrass trade, or of giving to the law a reasonable interpretation which would markedly help in the development of trade; confronted with the option of barring from the courts foreign litigants with good causes of action or of assuming jurisdiction of their cases; confronted with the option of construing the law to mean that any corporation in the United States which might want to sell to a person in the Philippines must send some representatives to the Islands, before the sale, and go through the complicated formulae provided by the Corporation Law with regard to the obtaining of the license, and before the sale was made, in order to avoid being swindled by Philippine citizens, or of construing the law to

mean that no foreign corporation doing business in the Philippine Islands can maintain any suit until it shall possess the necessary license, confronted with these options, can anyone doubt what our decision will be? The law simply means that no foreign corporation shall be permitted to 'transact business in the Philippine Islands' as this phrase is known in Corporation Law, unless it shall have the license required by law, and, until it complies with the law, shall not be permitted to maintain any suit in the local courts. A contrary holding would bring the law to the verge of unconstitutionality, a result which should be and can be easily avoided."

This decision of the Supreme Court demands of us the construction of the law in connection with the other provisions. Construing the law as was done in this case, the Supreme Court wants us to give meaning to the provision "no foreign corporation or corporations formed, organized, or existing under the laws other than those of the Philippine Islands shall be permitted to transact business in the Philippine Islands *OR* maintain by itself or assignee any suit for the recovery of any debt, claim, or demand whatever, unless it shall have the license prescribed in the section immediately preceding" to be simply that no foreign corporation shall be permitted "to transact business in the Philippine Islands" unless it complies with the law and shall not be permitted any suit in the local courts. It disregards altogether the last part of the sentence which uses the conjunction *or* and tries to put in its place the conjunction *and* in order to read thus: "to transact business in the Philippine Islands and maintain by itself * * *" This gives us only a fit proviso for a case in which a foreign corporation wishes to transact business in the Philippine Islands and in order to be able to do business and use the local courts it must first have a license.

Bearing in mind the above interpretation given to the law by the Supreme Court, what statute will then govern the case of a foreign corporation not transacting business in the Philippine Islands but wishing to sue in its courts for the recovery of any debt, claim or demand whatever? Of course, there would be none, and thus state comity will be resorted to as the Supreme Court has done in this particular case. Instead of applying the law as it is, it suppressed the law and then went around and resorted to the principle of comity. The Court need not have taken this step had it not first disregarded and suppressed the law, for state comity can be resorted to only in the

absence of a law governing the matter in question. "But this principle (referring to the principle of comity) extends to and is enforced by the courts of every nation and every state of the American Union until destroyed by the law-making power." (5 Thompson on Corporations, page 1419.) The Philippine Legislature provided that no foreign corporation can maintain any action without first complying with the prescribed requirements. There should have been no longer any room for comity, the Legislature having destroyed it by the enactment of the law. The Supreme Court in interpreting the law thus, justified its action by holding that the particular point should be generally interpreted in connection with the other provisions of the law. In this particular case, there was no need for a general interpretation of the whole law inasmuch as there is no ambiguity either in the language or in the thought of the law in point. It is a general rule of statutory construction that when the language of the law is clear and explicit, its literal meaning should be followed. The action of the Supreme Court in this case is indeed very unusual. The question, taking the ordinary and only feasible construction of the law, can be solved without hardship by taking into account the second case in which our Corporation Law requires a license as has already been dealt with in the previous paragraphs—that is, that no foreign corporation not permitted to transact business in the Philippine Islands can maintain by itself or assignee any suit for the recovery of any debt, claim or demand whatever, unless it shall have the license prescribed in Section 68 of the Corporation Law.

CONCLUSION

Thus we see that the law and the only decision of the Supreme Court in construing that very provision of law are conflicting. The conflict is so shocking that it would not be very extraordinary if the Supreme Court in its future decisions would reverse the stand that it has taken in this case. Commendable though the action may be because taking the construction of the law as it should be, it would indeed work hardship to those foreign corporations that happen to get some isolated orders here in the Philippine Islands; they would not be able to sue in the local courts for the enforcement of their contracts without the necessary license and are therefore liable to be swindled not only by Philippine citizens as said in the decision but also foreigners residing here as the Americans, Europeans, Chinese, etc; yet the fact remains that the law requires the getting of

a license and it must be followed for it is the law. There is no question as to the power of the Philippine Legislature to enact such a law nor is there any question of its constitutionality. (24 C. J., page 1244.)

This anomalous situation leaves us in a quandary. In order therefore to solve this dilemma, two possible remedies are suggested:

(1) The first is within the power of the Supreme Court itself. It can remedy the situation by reversing its unusual stand on the subject and apply the law properly construed in its future decisions no matter how harsh its proper application may be.*

(2) The second is to request the Legislature to amend the law in the way the Supreme Court has construed it in order to do away with the alleged injustice done to foreign corporations for not being able to use the local courts and obtain redress for their claims without the necessary license. In fact, this is one of the reasons which actuated the Supreme Court in its decision. This remedy will give the foreign corporations not licensed to do business here the right to sue in the local courts by relying on state comity. Taking into consideration the present circumstances and the trend of present-day legislation, this remedy is feasible and a very appropriate one.

* *Note.*—In *Western Equipment and Supply Co. vs. Reyes* (51 Phil. 115) the court held that an unregistered corporation may maintain an action in court if such entity is widely known in the Islands.—ED.