INTERNATIONAL LAW—1958

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SUIT IN LOCAL COURT AGAINST FOREIGN STATE

A sovereign state cannot be sued in its own courts, much more in a foreign court, without its consent. [1] Consent may be given expressly by an act of Congress or impliedly by entering into a contract with a private person on the theory that the state has descended to the level of private persons from which it can be implied that it has consented to be sued under the contract. [2] Implied consent is illustrated in the recent case of *Harry Lyons, Inc. vs. The United States of America.* [3] The plaintiff and the defendant in this case entered into a contract of stevedoring service at the U.S. Naval Base, Subic Bay, Phil., the contract to last till 1956. It is undisputed that the contract was entered into pursuant to the U.S. Armed Forces Procurement Act (1947) by the United States Government thru its naval authorities at the Subic. The contract laid down the procedure to be followed by the plaintiff should it desire to obtain remedy under the contract, the Secretary of the Navy being the last administrative body to whom appeal may be taken, whose decision, however, is still subject to judicial determination on grounds enumerated therein.

Plaintiff sued defendant under the contract in the Manila CFI which dismissed the action on the ground that it had no jurisdiction over the defendant, it being a sovereign state which cannot be sued without its consent, and that the plaintiff prematuredly instituted the action in court without first exhausting the administrative remedy provided for in the contract. These were the questions raised on appeal.

Held: A sovereign state, as a general rule, cannot be sued in its own courts or in any court. However, this doctrine of state immunity from suit gives way to a case where a state is sued under a contract entered into by it with a private person on the theory that it has descended to the level of a private person and has impliedly given its consent to be sued under the contract which has given rise to contractual rights and obligations enforceable at law. [4]

Considering therefore, that the United States Government, thru its duly designated agents at the Subic Naval Base, has entered into a contract with the plaintiff herein for stevedoring service within the Subic Bay Area, a U.S. Naval Reservation, it is clear that plaintiff Harry Lyons, Inc. can institute the present action in our courts for any contractual liability that the United States Government may assume under the contract. [5]

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[1] The basis for the rule that a state cannot be sued in its own courts is the theory that "there can be no legal right as against the authority which makes the law upon which the right depends." Kawananakao vs. Polyblank, 205 U.S. 349.

[2] For other cases of implied consent see RIVERA and QUIAZON, POLITICAL LAW REVIEWER, Vol. I (1958), pp. 177-182.

[3] G.R. No. L-11786, September 26, 1958.

[4] Santos vs. Santos, 48 O.G. 4615, May 26, 1952. This suit involves a claim by a Filipino citizen against the Government of the Philippines. No reason was given why the Supreme Court invoked the ruling in this case. It must be remembered that the Harry Lyons case is a suit between a local corporation and a foreign state.

[5] The case was dismissed on the ground that the plaintiff failed to exhaust the administrative remedy provided for in the contract.

TAX EXEMPTION CLAUSE UNDER THE U.S.-PHILIPPINE MILITARY BASES AGREEMENT

The U. S.-P. I. Military Bases Agreement contains a tax-exemption clause[6] which was the subject of judicial interpretation in the case of *Naguiat v. J. Antonio Araneta.*[7] Said exemption clause provides:

> It is mutually agreed that the United States shall have the *right to establish* on Bases *free* of all licenses, fees, sales, *excise or other taxes*, or imposts, Government agencies, including concessions, such as sales commissaries and post exchanges, messes and social clubs, for the exclusive use of the United States Military forces and authorized civilian personnel and their families. The *merchandise or services sold or dispensed* by such agencies shall be *free of all taxes*, duties, and inspection by the Philippine authorities. . . .

Plaintiff Naguiat is an operator of taxi service within the Clark Air Base. Income tax was assessed on his income derived from said business operation which he paid under protest. He now seeks to recover the amount paid by him under said assessment. *Held:* The tax-exemption clause relied upon by the plaintiff contemplates limiting the exemption from the licenses, fees and other taxes enumerated therein to the *right to establish* government agencies, including concessions,[8] and to the *merchandise or services sold or dispensed by such agencies.* The *income tax which* is *not on the right to establish* agencies or on the *merchandise or services sold or dispensed* thereby, but on the owner or operator of such agencies, is logically excluded. Plaintiff cannot seek refuge in the use of "excises" or "other taxes or imposts" in paragraph 1 of Article XVIII of the Agreement, because, as already stated, said terms were employed with particular application to the right to establish agencies and concessions within the bases and to the merchandise or services sold or dispensed by such agencies and concessions.

DEPORTATION OF ALIENS

The act of state to exclude and expel overstaying and undesirable aliens from its territory is an absolute and unqualified right of every sovereign state recognized in international law. Hence, no alien, however great and powerful his country may be, can claim a vested right to stay in the Philippines. Neither can he claim the same by proof of negligence or inaction on the part of the executive department to deport him as long as the grounds for his expulsion exist.

In the case of *Tiu Chun Hai and Go Tam v. Commissioner*[9] the Manila CFI granted a writ of habeas corpus to the petitioners and ordered their immediate release from confinement on the ground that the warrant of arrest issued by the Commissioner of Immigration for the arrest and confinement of the petitioners, pending deportation proceedings, was irregular because no criminal charges have been filed against them in any court, nor was there a judicial arrest issued, which according to said court, is necessary to justify the continuance of petitioners' detention. *Held:* Tiu Chun Hai, an overstaying alien, and Go Tam, an alien who violated the conditions of his temporary release, were arrested and confined by authority of a valid warrant of arrest issued by the Commissioner of Immigration. Proceedings for deportation of aliens are

[6] Paragraph 1, Article XVIII.
[7] G.R. No. L-11594, December 22, 1958.
[8] Since no distinction was made, the concessions referred to may be granted to nationals, private entities and citizens of the U.S. or of the Philippines. Such concessionaire is not subject to any tax for the establishment or operation of a business inside U.S. bases. Araneta vs. Manila Pencil Co., G.R. No. L-8162, June 29, 1956.
[9] G.R. No. L-10009, December 22, 1958.

not criminal in nature, and neither do they follow the rules established for criminal proceedings. They are summary in nature and the proceedings prescribed in criminal cases for the protection of the accused are not present or followed in deportation proceedings. They are administrative in character and governed by specific provisions of law,[10] under which the Commissioner of Immigration may issue a warrant of arrest for the confinement and deportaiton of aliens upon the grounds stated therein.

On the nature of the power of the state to deport aliens, Justice Labrador said:

> The right of this Government to have the petitioners deported cannot be questioned. The right of the country to expel or deport aliens because their continued presence is detrimental to public welfare is absolute and unqualified. In case of temporary visitors such detriment is not necessary: it is enough that they have overstayed the period of their permits. We do not believe that this right or power, or even duty, has in anyway been lost, or can it in anyway be denied by the neglect of the executive department. Mere courtesy can not create such right or privilege, however long such courtesy may have been.

TEMPORARY USE OF PRIVATE PROPERTY BY BELLIGERENT ARMY DURING WAR TIME

Article 46 of the Hague Regulations expressly states that "private property may not be confiscated" by an invading belligerent army.[11] This provision embodies the rule in international law requiring an invading army to respect private properties found in the invaded or occupied country. This rule, however, is not without qualification,[12] for it is equally true—and all civilized countries agree—that an invading army may make use of private properties found in occupied territory without violating the first rule adverted to, provided however, that the preservation or maintenance of the said army requires or warrants such use.

The rules above-mentioned are recognized in this jurisdiction by express provision of our Constitution to the effect that "the generally accepted principles of international law" are part of our national law.[13]

Thus, in the case of *Villaruel vs. Manila Motor Co.*,[14] the Supreme Court ruled that the Japanese Army validly and legitimately asserted its right to convert to its own use the premises leased by the plaintiff to the defendant Manila Motor Co. The act of dispossession was not a mere act of trespass (perturbación de mero hecho) for which the lessee alone is liable but an act under a color of juridic title (perturbación de derecho). As a consequence of such dispossession, the lessee was relieved of its obligation to pay the rentals on said premises during the entire period of occupancy.

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[10] Sec. 38(a) (7), C.A. No. 613: "Sec. 48(a). The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or any other officer designated by him for the purpose and deported upon the warrant of the determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

". . . .

"(7) Any alien who remains in the Philippines in violation of a limitation or condition under which he was admitted as a non-immigrant; . . ."

Note: The Supreme Court in the previous cases of Mejoff vs. Director of Prisons, G.R. No. L-4254, September 26, 1951 and Chirskoff vs. Commissioner, G.R. No. L-3602, October 26, 1951 granted the writ of habeas corpus on the ground of impossibility of carrying out the deportation because the petitioners therein were not recognized as citizens of the country to which deportation was attempted.

[11] LAUTERPACHT'S OPPENHEIM, INTERNATIONAL LAW, Vol. II, p. 312, 1944 Ed.

[12] HYDE, *International Law*, Vol. III, p. 1893, 2nd Rev. Ed. FORREST and TUCKER, *International Law*, p. 277, 9th Ed.

[13] Sec. 3, Article II.

[14] G.R. No. L-10394, December, 1958.

This decision is a complete reversal of the rule enunciated by the Supreme Court in *Reyes vs. Caltex* [15] where it was held that the act of the Japanese Army in evicting the lessee from the leased premises was a mere act of trespass, thereby making the lessee responsible for the rentals that it should have paid during the entire period of dispossession while the lease contract ran.

RULE OF RECIPROCITY IN TAXATION

Whenever a non-resident alien during his lifetime extended his business operations with respect to his intangibles, like corporate stocks, to this country, so as to avail himself of the protection and benefits of our laws, in such a manner as to place his person and intangibles within the sphere of our laws, such intangibles may be taxed under the Philippine Tax Code (National Internal Revenue Code). [16] But this rule does not apply where the Philippine Tax Code expressly exempts the payment of inheritance tax on the transmission of intangible personal property [17] located in the Philippines and owned by a non-resident alien whose country of residence or domicile at the time of his death extends the same exemption to Filipino citizens with respect to their intangibles located therein. Thus, the Supreme Court exempted the ancillary administrators of the estates of Hugo Miller [18] and Lionel Hargis, [19] both citizens of the United States and residents of California at the time of their death, from payment of inheritance taxes on the transmission of shares of stocks (of Philippine corporations) owned by them for it was shown during the proceedings that the laws of California [20] at the time of their death exempted citizens of the Philippines from payment of inheritance tax on intangibles owned by them and located in California.

[15] 84 Phil. 554 (1949). Justice J.B.L. Reyes made a distinction between the Villaruel case and the Caltex case which to our mind is insignificant. The former case completely overrules the latter. But it must be remembered that the Villaruel decision is evidently not a reversal of the decision in Lo Ching vs. Archbishop, 81 Phil. 601 (1948) because in the latter case the Japanese Army went clearly beyond the limits set by the Hague Convention in confiscating a private property and delivering it to another private individual.

[16] Wells Fargo Bank & Union Trust Co. vs. CIR, 70 Phil. 825 (1940).

[17] Sec. 122, National Internal Revenue Code.

[18] Collector vs. De Lara, G.R. No. L-9456, June 6, 1958.

[19] Collector vs. James Norton, G.R. No. L-10432, May 28, 1958.

[20] Sec. 6, California Inheritance Tax Act of 1935, re-enacted as sec. 1385, California Rev. and Taxation Code.