

5 Phil. 533

[G.R. No. 2038. January 13, 1906]

**A. M. ESSABHOY, PLAINTIFF AND APPELLEE, VS. SMITH, BELL & CO.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

WILLARD, J.:

On or about the 5th day of September, 1903, the steamship *Umballa* arrived in the port of Manila, having on board 50,000 bags of rice, the property of the plaintiff. Plaintiff originally intended to ship this rice from Singapore to Japan, but afterwards diverted it to Manila. Upon its arrival here the plaintiff's agent made a contract with the defendants by the terms of which the defendants agreed to land the rice and store it in a bonded warehouse. In accordance with this agreement the defendants did land the rice, and stored 40,000 bags of it in a bonded warehouse, but the remaining 10,000 bags they stored in their *godown* in San Miguel, a warehouse which was not bonded.

The plaintiff sold 4,000 of the bags of rice here in Manila, which bags were delivered out of the bonded warehouse, and customs duties paid thereon. He then determined to ship the rest of the rice to Japan, and called upon the defendants for its delivery to him. The defendants delivered to him the rice that was left in the bonded warehouse, and he was enabled to and did reship it without the payment of any customs duties thereon. As to the rice in the San Miguel *godown*, it then transpired that customs duties had been levied upon this rice by the Government, which duties the defendants had paid without the knowledge or consent of the plaintiff. The amount thereof was \$6,000.55, United States currency. The defendants refused to deliver the rice to the plaintiff unless they were repaid this amount of \$6,000.55. The plaintiff, in order to get possession of his rice, was obliged to and did pay under protest to the defendants this amount, securing the rice and reshipping it to Japan. He then brought this action to recover the amount so paid by him under protest.

Articles delivered into a bonded warehouse immediately upon arrival in Manila can be

shipped out of the country from such bonded warehouse without the payment of duties. Articles delivered into a warehouse not bonded must, however, pay duties whether they are shipped out of the country or not. If Smith, Bell & Co. had complied with their contract, and stored all of the rice in a bonded warehouse, no duties would have been charged upon any of it, and the payment of the \$6,000.55 would have been avoided. A warehouseman is entitled to reimbursement for the expenses which he incurs in the performance of his contract. For expenses which he incurs in violation of his contract he is not entitled to reimbursement. The payment of these duties was an expense which Smith, Bell & Co. did not incur in the performance of their contract. They incurred it by reason of their violation of the contract, and consequently they were not entitled to reimbursement.

Plaintiff's principal argument seems to be that this is an action to recover damages for the breach of a contract on the part of the defendants, and that no damages were proven. If the plaintiff, instead of paying the defendants the \$6,000.55 had refused to pay it and had brought an action to recover possession of the rice, it is very clear that in such an action the claim of the defendants to a lien upon the property for the payment of this \$6,000.55, and the right to retain it until that payment had been made, could not have been sustained, and the plaintiff in such an action would have recovered the possession of the rice without paying this demand. So if Smith, Bell & Co. had delivered the rice without insisting upon a reimbursement at that time for this expense, and had afterward brought an action against the plaintiff to recover this amount, it is clear that they could not have prevailed in such an action. In neither one of these cases would the court have gone into the question as to whether the plaintiff made or lost money by the reshipment of his rice to Japan. In both of them the court would have said that the property belonged to the plaintiff, and that he had a right to dispose of it as he saw fit, and that the only right or claim which the defendants had was a right to be reimbursed for the expenses which they had incurred in the performance of their contract, and the expense which they incurred in the payment, of the duties not being an expense incurred in the performance of the contract, they would neither be entitled to recover the amount in an independent action nor to retain the rice until they were repaid. What the rule would have been had an action been brought for damages for breach of the contract, it is not necessary to decide, for this is not such an action.

The plaintiff having been compelled, in order to get possession of his property, to pay an unlawful demand made by the defendants upon him, and such payment having been made under protest, the latter have in their hands money which does not belong to them, but which belongs to the plaintiff. In such cases the law imposes upon them the obligation to repay it.

The judgment of the court below is affirmed, with the costs of this instance against the appellants and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below for execution. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.

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