

7 Phil. 546

[ G.R. No. 2938. February 26, 1907 ]

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE,  
VS. GRACIANO PUNZALAN ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**CARSON, J.:**

This is an action upon a bond executed by the defendants in favor of the Government of the Philippine Islands to secure the safe-keeping and return upon demand of twenty Remington rifles.

From the evidence of record it appears that these rifles were stolen by a band of brigands on or about the 5th day of January, 1905, and that lawful demand having been made upon the defendants on the 18th day of January, 1905, they were unable, or in any event failed, to return them in accordance with the conditions of the bond.

There is evidence of record tending to show that there was more or less negligence in the performance of their duties as municipal officials on the part of some, if not all, of the defendants, which may have contributed to the loss of these arms; it is not necessary, however, to go into this question for the purpose of this appeal, because the defendants obligated themselves unconditionally to care for and return the said rifles on demand, or in the event of failure so to do to pay to the Government of the Philippine Islands the sum of 2,000 dollars, United States currency.

Counsel for the appellants assign the following errors:

First. That the trial court erred in holding the contract of the bond signed by the appellants valid by virtue of Acts Nos. 175 and 610 of the Philippine Commission, and of Executive Order No. 9, series of 1903, without taking into consideration that said bond violates and infringes the guaranty of protection offered to the people of the Philippine Islands, and to its citizens in section 4 of the Philippine Bill.

Second. That the trial court erred in holding the contract of the said bond valid without taking into consideration that the sum fixed therein is in violation of that part of section 5 of the said Philippine bill which provides that excessive bonds shall not be required.

Third. That the trial court erred in holding that the contract of the said bond was valid, although it violates all the principles of juridical contracts and the positive and pertinent provisions of the Civil Code.

Fourth. That the trial court erred in refusing to admit defendants' Exhibit A as proof of the reason for their consenting to the execution of said bond.

Fifth. That the trial court erred in refusing to admit the documents "B" and "C" as proof of the injustice of the plaintiff's demand exacting payment of the value of the bond on account of rifles which have been recovered and which are already in the hands of the plaintiff.

It is sufficient answer to the first three assignments of error to point out that the bond was voluntarily executed and that if it was in fact excessive, or if the Government had no right to exact such a bond before delivering the arms to the defendants, they should have refused to become parties thereto.

It is true that section 4 of the Philippine bill guarantees to the citizens of these Islands, as such, the protection of the United States, but this is by no means a guaranty that the Government will furnish a certain number of rifles to any or all of the municipalities of the Philippine Islands, or to any or all of the officials and residents therein. The defendants formally petitioned for these rifles and accepted them upon certain conditions. They do not deny that they have failed to comply with these conditions, and they are therefore bound by the terms of their contract in accordance with article 1255 of the Civil Code, which provides that "contracting parties may make such conditions as they find convenient, provided that they are not contrary to the law, morals, or public order."

The contention that the bond is excessive seems to be based upon the theory that it largely exceeds the market value of the rifles intrusted to the defendants, but it can not be doubted that the principal purpose and object of the bond was, not so much to secure the safe-keeping of these arms on account of their intrinsic value, as to keep them from falling into the hands of evil doers. (Acts Nos. 175 and 610 of the Philippine Commission.)

It is hardly necessary to point out that in no event has the prohibition of excessive bail in the Philippine Islands any application to this case, as bail bonds are wholly distinct in nature

and object from the bond under consideration. The word "bail" as used in that portion of section 5 of the Act of Congress of July 1, 1902, which provides that "excessive bail shall not be required" is inadequately translated by the word "*fianza*," as bail implies a particular kind of bond—that is to say, a bond given to secure the personal liberty of one held in restraint upon a criminal or *quasi* criminal charge.

Exhibit A, referred to in the fourth assignment of error is a letter purporting to be a communication from the provincial fiscal of Tayabas, dated prior to the execution of the bond, in which he stated that, in his opinion, the defendants could not be held responsible under the bond for the loss of the arms under circumstances such as those surrounding the actual loss as it occurred. The trial court properly refused to admit this letter in evidence on the ground that it was a mere expression of opinion by an official who had no authority whatever to modify, vary, or interpret the terms of the bond, and who was not a party to the contract.

The documents referred to in the fifth assignment of error are certificates setting out the recapture of five of the rifles in question a short time after they had been stolen and their recovery by the plaintiff. These documents, taken together with the testimony of some of the witnesses, if admitted, would have been sufficient to establish the fact that after the robbery had occurred, some at least of the defendants exercised considerable diligence in an effort to recover the arms which had been stolen, and that, due in part to their efforts, and in part to the efforts of the Constabulary and other agents of the Government, five of these rifles had been recaptured prior to the institution of this action.

The trial judge was of opinion that this evidence was inadmissible but, without objection on the part of the plaintiff, directed the clerk to unite these documents to the record for the consideration of this court. A majority of the court is of opinion that in substance and effect the bond is "an obligation with a penal clause" and that this evidence should have been admitted and taken into consideration for the purpose of equitably modifying the penalty in accordance with article 1154 of the Civil Code, which directs that "the judge will equitably modify the penalty when the principal obligation shall have been fulfilled by the obligor in part or irregularly."

There can be no doubt that the failure of the defendants to return the arms intrusted to them constituted a violation of the conditions of the bond, and subjected them to the penalty therein provided, but the majority of the court are of opinion that the prompt recovery of five of the twenty rifles with the aid of some of the defendants should be treated as a partial

fulfillment of the contract, and that the judgment of the trial court for the sum of 2,000 dollars, United States currency, that being the full amount of the bond, should be reversed; and that instead thereof judgment should be entered in favor of the plaintiff and against the defendants for the sum of 1,500 dollars, United States currency, and the costs of both instances.

After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter let the record be returned to the trial court for execution. So ordered.

*Arellano, C. J., Torres, Mapa, Willard, and Tracey, JJ., concur.*

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