

[G. R. No. 19135. December 06, 1922]

**THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE,
VS. LUNETA MOTOR CO., INC. AND FIDELITY & SURETY CO. OF THE PHILIPPINE
ISLANDS, DEFENDANTS AND APPELLANTS.**

D E C I S I O N

STATEMENT

February 9, 1921, the defendant Luneta Motor Company, as principal, and the defendant Fidelity & Surety Company, as surety, executed to the Collector of Customs of the port of Manila a certain bond for P25,000, for the purpose of making entry of certain goods, wares, and merchandise imported in the steamship *Matawa*, in and by which they bound themselves within four months to produce to the Insular Collector of Customs the original bill of lading covering the shipment, duly indorsed, showing the ownership of the merchandise to be in the Luneta Motor Company, and that upon the production of such bill of lading within the four months, the bond should become null and void; otherwise it shall remain in full force and effect.

For failure to deliver the bill of lading within the terms of the bond, this action was brought, and upon the petition of the surety company, Carlos Young was made a defendant, for the reason that he was surety for the surety company.

The defendants admit the execution of the bond, and, as a further and separate defense, allege that the bond was given in accordance with article 1316 of the Administrative Code "by virtue of which the P25,000 represented by said obligation only guaranteed the payment of damages which might be occasioned to the original owner for the delivery of the merchandise to the defendant Luneta Motor Co., Inc." "That the defendant Luneta Motor Company, Inc. has offered and is still offering to the Collector of Customs, as well as to the International Banking Corporation, the holder of the bill of lading relating to the aforesaid

merchandise, the return of the merchandise mentioned, but none of them has accepted said return on account of which this action was commenced by this defendant against the International Banking Corporation and the Collector of Customs in the Court of First Instance of Manila, etc.” “That neither the Collector of Customs nor the aforesaid International Banking Corporation has suffered damages for the delivery of the merchandise in question to the Luneta Motor Company, Inc.,” and pray that the plaintiff be compelled to accept the return of the merchandise and to pay the costs.

The defendants having admitted the execution of the bond and the breach having been shown, the trial court, without any proof of actual damages, rendered judgment for the plaintiff for the full amount of the bond, from which all of the defendants appeal, contending that the lower court “erred in holding the defendants liable on the bond without proof of damage,” and “in sentencing defendants to pay jointly and severally unto the Government of the Philippine Islands the sum of P25,000, with interest.”

Johns, J.:

As stated by the appellants, there is no evidence of any actual damages sustained by anyone, and the judgment was rendered by reason of a breach of the conditions of the bond and without any further proof.

This court in *Government of the Philippine Islands vs. Union Guaranty Co., Ltd.*, R. G. No. 16700,^[1] and *Government of the Philippine Islands vs. Tan Liuan & Co. and Union Guaranty Co., Ltd.*, R. G. No. 18139,^[2] under almost a similar state of facts, dismissed the complaints on the ground “that there is not a word of testimony to show the amount of damages, if any, suffered by the Yokohama Specie Bank, the holder of the bill of lading.” That is this case.

The Attorney-General, recognizing the force of those decisions, has requested that the action be dismissed without prejudice to plaintiff’s rights. It is very apparent that the plaintiff has a cause of action. Some of the members of the court, including the writer, are of the opinion that upon the facts shown, the case should be reversed and remanded with leave to the parties in interest to file amended pleadings and offer any further proof. The plaintiff, having requested that the action be dismissed without prejudice, the majority of the court are of the opinion that the request should be granted.

It is, therefore, ordered, adjudged and considered by the court that the judgment of the lower court is reversed without prejudice to any of plaintiff’s legal rights, and that neither party recover costs on this appeal. So ordered.

Araullo, C. J., Street, Malcolm, Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.

^[1]Promulgated January 25, 1922, not reported.

^[2]Promulgated May 25, 1922, not reported.

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