

44 Phil. 576

[G.R. No. 19715. March 05, 1923]

JAMES J. MCCARTHY, PLAINTIFF AND APPELLANT, VS. VICENTE ALDANESE, DEFENDANT AND APPELLEE.

D E C I S I O N

OSTRAND, J.:

This is an action in replevin against the Insular Collector of Customs for the recovery of seven cases of cotton textiles alleged to have been imported into the Philippine Islands on the Steamship *City of Lincoln* on or about October 23, 1920, or for the value of said textiles if physical delivery cannot be made. The trial court rendered judgment in favor of the defendant absolving him from the complaint, from which judgment the plaintiff appeals to this court.

The evidence shows that the American Undergarment Corporation held a bill of lading for thirty cases of textiles shipped from New York on the *City of Lincoln* arriving in Manila in October, 1920. Only twenty-three cases were delivered to the corporation by the Insular Collector of Customs and there is some dispute as to whether the other seven cases were discharged from the ship and came into the hands of the Customs authorities. The court below found, however, that all of the thirty cases were landed and we think the preponderance of the evidence fully sustains this finding. As soon as the shortage was discovered a careful, but fruitless, search was made for the missing cases and it is sufficiently established that they were not then, and are not now, in the possession of the defendant.

The goods were insured with the Union Insurance Society which paid the American Undergarment Corporation the full amount of the loss and having thus become subrogated to the rights of the American Undergarment Corporation,

assigned such rights to James J. McCarthy, the plaintiff herein.

The Insular Collector of Customs is personally liable if he delivers merchandise in course of importation to a person other than the holder of the bill of lading therefor (Administrative Code, sec. 1316). He is, of course, also liable for his own personal misfeasance or malfeasance, but in the absence thereof he is not legally responsible for the safe-keeping of merchandise stored in any customs or bonded warehouse, nor is he personally liable for torts of his subordinates.

Mechem in his work on Public Offices and Officers, section 789, says:

“It is well settled as a general rule that public officers of the government, in the performance of their public functions, are not liable to third persons, either for the misfeasances or positive wrongs, or for the nonfeasances, negligences, or omissions of duty of their official subordinates.

“This immunity rests upon obvious considerations of public policy, the necessities of the public service and the perplexities and embarrassments of a contrary doctrine.”

And in section 793 he says:

“So a collector of customs is not personally liable for a tort committed by his subordinates, there being no evidence to connect the collector personally with the wrong, or that the subordinates were not competent or were not properly selected for their positions.

In the case of *Robertson vs. Sichel* (127 U.S., 507, 514-516), speaking of the liability of the Collector of Customs of New York for the burning of a trunk in the customs' premises through the negligence of a customs' employee, the court said:

“We are of opinion that there was error in the charge of the court, and that

the defendant was not liable for the wrong, if any, committed by his subordinates, on the facts of this case. There is nothing in the evidence to connect the defendant personally with any such wrong. No evidence was given that

the officers in question were not competent, or were not properly selected for their respective positions. The subordinate who was guilty of the wrong, if any, would undoubtedly be liable personally for the tort, but to permit a recovery against the collector, on the facts of this case, would be to establish a principle which would paralyze the public service. Competent persons could not be found to fill positions of the kind, if they knew they would be held liable for all the torts and wrongs committed by a large body of subordinates, in the discharge of duties which it would be utterly impossible for the superior officer to discharge in person.

“This principle is well established by authority. It is not affected by the fact that a statutory action is given to an importer, to recover back, in certain cases, an excess of duties paid under protest; nor by the fact that a superior officer may be held liable for unlawful fees exacted by his subordinate, where lawful fees are prescribed by statute, and where such fees are given by law to the superior, or for the act of a deputy performed in the ordinary line of his official duty as prescribed by law. The government itself is not responsible for the misfeasances or wrongs, or negligences, or omissions of duty of the subordinate officers or agents employed in the public service; for it does not undertake to guarantee to any person the fidelity of any of the officers or agents whom it employs; since that would involve it, in all its operations, in endless embarrassments, and difficulties, and losses, which would be subversive of the public interests. (Story on Agency, sec. 319; Seymour vs. Van Slyck, 8 Wend., 403, 422; U.S. vs. Kirkpatrick, 9 Wheat., 720, 735; Gibbons vs. U.S., 8 Wall., 269; Whiteside vs. U. S., 93 U.S., 247, 257; Hart vs. U.S., 95 U. S., 316, 318; Moffat vs. U.S., 112 U.S., 24, 31; Schmalz vs. U.S., 4 Ct. Cl., 142.)

“The head of a department, or other superior functionary, is not in a different position. A public officer or agent is not responsible for the misfeasances or positive wrongs, or for the nonfeasances, or negligences, or omissions of duty, of the subagents or servants or other persons properly employed by or under him, in the discharge of his official duties. (Story on

Agency, sec. 319.)”

It is not intimated the defendant has been guilty of personal misfeasance or malfeasance, but the plaintiff, contends that the seven missing cases having disappeared after coming into the hands of the Customs authorities and their disappearance not having been satisfactorily explained, it must be presumed that they have been misdelivered.

This contention is clearly untenable. The presumption is that official duty has been regularly performed and we cannot presume that the Collector of Customs has delivered the merchandise to a person not entitled thereto. That the goods have been misdelivered is therefore an affirmative allegation, the proof of which is incumbent upon the party by whom it is made. If a misdelivery has been made, proof thereof should not be difficult to obtain; the records of the Customs House are available for that purpose.

The judgment appealed from is therefore affirmed, with the costs against the appellant. So ordered.

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