

IRINEO S. BALTAZAR, PLAINTIFF AND APPELLEE, VS. LINGAYEN GULF ELECTRIC POWER CO., INC., ETC., ET AL., DEFENDANTS AND APPELLANTS; MARVIN O. ROSE, PLAINTIFF AND APPELLEE, VS. LING...*G.R. Nos. L-16236-38. June 30, 1965*

Ponente: PAREDES, J.

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In Civil Case G.R. No. L—16236 (CF1 No. 13211), Irineo S. Baltazar, filed the complaint against Lingayen Gulf Electric Power Co., Inc., Dominador C. Ungson, Brigido G. Estrada, Manuel L. Fernandez, Benedicto C. Yuson and Bernardo Acena.

In Civil Case G.R. No. I 162:57 (CFI No. 13212), Marvin O. Rose, filed the complaint against the same defendants.

In Civil Case G.R. No. L—16238 (CFI No. 13340), Baltazar and Rose, filed their complaint against Bernardo Acena alone.

The Lingayen Gulf Electric Power Co., Inc., hereinafter referred to as Corporation, was doing business in the Philippines, with principal offices at Lingayen, Pangasinan. and with an authorized capital stock of P300,000.00 divided into 3,000 shares of voting stock at P100.00 par value, per share. Plaintiffs Baltazar and Rose, were among the in-corporators, having subscribed to 600 and 400 shares of the capital stock, or a total par value of P60,000.00 and P40,000, respectively. It is alleged that it has always been the practice and procedure of the Corporation, to issue certificates of stock to its individual subscribers for unpaid shares of stock. Of the 600 shares of capital stock subscribed by Baltazar, he had fully paid 535 shares of stock, and the Corporation issued to him several fully paid-up and non-assessable certificates of stock, corresponding to the 535 shares. After having made transfers to third persons and acquired new ones, Baltazar had to his credit, on the filing of the complaint, 341 shares fully paid and non-assessable. He had also 65 shares with a par value of P6,500.00, for which no certificate was issued to him. Of the 400 shares of stock subscribed by Rose, he had 375 shares of fully paid stock, duly covered by certificates of stock issued to him.

The respondents Ungson, Estrada, Fernandez and Yuson, were small stockholders of the Corporation, all holding a total number of fully paid-up shares of stock, of not more than 100 shares, with a par value of P10,000.00 and the defendant Acena, was likewise an incorporator and stockholder, holding 600 shares of stock, for which certificates of stock were issued to him and as such, was the largest individual stockholder thereof. Defendants Ungson, Estrada, Fernandez and Yuson, constituted the majority of the holdover seven-member Board of Directors of the Corporation, in 1955, two (2) of said defendants having been elected as members of the Board in the annual stockholders' meeting held in May 1954, largely on the vote of their co-defendant Acena, while the other two (2) were elected mainly on the vote of the plaintiffs and their group of stockholders. Let the first group be called the Ungson group, and the second, the Baltazar group.

The date of the annual stockholders' meeting of the Corporation had been fixed, under its by-laws, on the first Tuesday of February of every year, but for one reason or another, the meeting was to be held on May 1, 1955, principally for the purpose of electing new officers and Board of Directors, for the calendar year 1955. In connection with said meeting, since January 1, 1955, there was a realignment effected, and the fight for control of the management and property of the corporation, was close and keen. The total number of fully paid-up shares held by stockholders of one group, was almost equal the number of fully paid-up shares held by the other group.

The Ungson group (specially defendant Acena), which had been in complete control of the management and property of the Corporation since January 1, 1955, in order to continue retaining such control, over the objection of three majority members of the Board, in the regular meeting of the Board of Directors, held on January 30, 1955, passed three (3) Resolutions (Exhs. A, B, C).

Resolution No. 2 (Exh. A), declared all watered stocks issued to Arena, Baltazar, Rose and Jubenville, "of no value and consequently cancelled from the books of the Corporation."

Resolution No. 3 (Exh. B) resolved that "[* * * at] unpaid subscriptions should bear interest annually from the year of subscription on the basis of quarterly payments and any or all payments already made on said unpaid subscriptions should be credited to pay interest first, then the capital debt after all interest is fully paid.

"All shares of stock issued to and in favor of any stockholder or stockholders of the Lingayen Gulf Electric Power Co., Inc.. on account of payments on unpaid subscriptions without the interest thereon accrued and collectible having been fully paid from the date of subscription as required by the Corporation Law, shall be declared of no value and cancelled from its books, and if the payments already made exceeded the interest accrued and collectible by virtue of the provision of law and the previous resolution of its board of directors, the excess should be applied to the payment of the unpaid subscription. For this purpose, the accountant of the corporation is directed to make and report the proper computation of the interest."

Resolution No. 4 (Exh. C) resolved that "any and all shares of stock of the Lingayen Gulf Electric Power Co., Inc., issued as fully Paid-up to stockholders whose subscription to a number of shares had been declared delinquent with the accrued interest on the unpaid thereof per Resolution No. 42, S. 1954, of the Board of Directors which has been duly published in the Manila Chronicle, are hereby incapacitated to utilize or avail of the voting power until such delinquency with the accrued interest is fully paid up as indicated in Resolution No. 3, S. 1955."

On the authority of these resolutions, the Ungson group was threatening and procuring to expel and oust the plaintiffs and their companion stockholders, for the ultimate purpose of depriving them of their right to vote in the said annual stockholders' meeting scheduled for May 1, 1955.

In their complaint, Baltazar and Rose prayed that a writ of preliminary injunction be issued against the defendants, enjoining them to desist and refrain from carrying out the objects and purposes of the three resolutions aforesaid, and commanding them to allow plaintiffs and companions to vote in the stockholders' meeting on May 1, 1955, their fully paid-up shares of stocks, as evidenced by stock certificates issued to them and outstanding on the stock book of the defendant Corporation, on or before January 30, 1955, to declare said three resolutions illegal and invalid, and to pay plaintiffs the sum of P10,000 each, as damages. On April 29, 1955, the trial court, after due hearing, issued preliminary injunction, as prayed for.

The defendants, in their answers, allege that during the years that plaintiffs and their allies were in control of the Corporation, no serious effort was attempted to retrieve it from its financial collapse, caused by accumulated indebtedness and by poor and inefficient management, resulting in losses of big sums of money from vicious manipulation of funds, nepotism, unconscionable grant of big salaries and allowances, illegal payments; unaccounted funds of Caltex business and sales department store, etc.; that during the time the management was

in the hands of plaintiffs (Rose, as manager, and his son-in-law Jean Bordeny, as assistant manager), attempts were made to release themselves from liability of their unpaid subscriptions; that the three resolutions were merely functional instruments to bolster the faith in the assets of the defendant Corporation and did not deprive the plaintiffs of their property without due process of law; that the issuance of a writ of injunction for the purpose of arresting the holding of the election of the Board, was beyond the jurisdiction of the court. They set up counterclaims. They prayed that the resolutions be declared legal and valid thus invalidating the "watered stocks" of plaintiffs, if not paid, and disqualifying the delinquent subscribers, among whom were the plaintiffs, from voting totally or partially, their subscriptions; to order plaintiffs to pay the defendant Corporation, first, the interest due and payable quarterly at 6% per annum from January 11, 1946 to December 31, 1954, on their liability under their delinquent subscriptions, out of the installment made therein; to pay defendant entity damages, under the counterclaims and expenses for the enforcement of the collection ; and that after complete payment of the. interests and the balance of their unpaid subscriptions, the defendant Corporation should issue the shares of stock to plaintiffs for their full subscription. Plaintiffs filed their answer to defendants' counterclaims, with counterclaims against defendants. On August 8, 1955, the lower court issued an order dismissing plaintiffs' counterclaims against Acena, Ungson and Fernandez "without prejudice to filing the proper separate actions therefor by the parties." Consequently, and as heretofore mentioned, Baltazar and Rose filed Case No. 13340 (supra).

The following¹ tentative amicable settlement, dated September 13, 1958, formulated and entered into by some of the parties and their respective attorneys, before presiding Judge Jesus P. Morfe, in the three cases, was submitted :

- "1. As to the so-called water stocks P30,000.00, each of the holders of said stocks, namely, Irineo Baltazar, Marvin Rose, and Bernardo Acena, will return to the corporation P 3,500 each of said stocks, thereby remaining P6,500 worth of stocks to be considered as valid for each under this compromise;
2. With respect to Dr. Bernardo Acona, of the certificate of stock allegedly representing this profit, he will return to the corporation P3,500 of said share of stock and retain P7,500 worth thereof;
3. With respect to the interest on unpaid balance of subscription it is agreed that the subscribers with unpaid subscription will be given the opportunity to pay in two installments, the first installment to cover one-half of the unpaid balance to be paid in three months, and the second installment will be for the remaining unpaid half payable in another three months, from the time of the approval of this agreement; with the understanding that those who comply with this arrangement will not pay interest on the balance of their subscription from the date of incorporation up to the grant of franchise on February 24, 1948, which, shall be deemed as condoned, and from 1948 they will pay only as interest 3% compounded annually, it being understood that failure of any subscriber to pay any of the installment here provided will subject the stockholders concerned to the provision of the corporation law of the payment of 0% interest compounded quarterly.
4. All claims and counterclaims other than those covered by the preceding paragraph of stipulation will lie deemed dismissed with out prejudice, in all these three cases;
5. All the resolutions of the Hoard and the stockholders involved in these instant cases will be deemed modified in accordance with this agreement."

On February 20, 1959, the lower court rendered a decision, approving the agreement and requiring the parties to comply with the same, and dissolved the writ of preliminary injunction, with costs. The pertinent portions of the decision are:

"In view of the agreement of tho parties transcribed above, this Court as called upon to decide whether or not any of the agreements of the parties as above transcribed is contrary to law or public policy. First, as regards

pars. 1 and 2, of said agreement, the legal capacity of the parties to sue and to be sued carries with it the power to enter into an amicable settlement of pending litigations and to expressly or impliedly make admission of facts; and they could, therefore, agree and recognize as fully paid for and valid the shares of stocks mentioned in said paragraphs of their agreement, which agreement must be held valid and binding among the parties, and even as against, their persons who have no proof that said agreements was entered into in fraud of creditors.

The next question for decision is whether or not a corporation may validly condone interest on unpaid subscriptions to its capital stock. The fact that our Corporation Law authorizes provisions in the by-laws of a corporation different from that set out in Sec. 37 of said law, shows that the provision of said law as to interest of unpaid stock subscriptions is merely directory, so that corporation may fix a different interest rate, or condone the payment of interest altogether if such condonation would, as in the instant cases, serve as inducement for early payment of stock subscriptions. The condonation and reduction of interest agreed upon in par. 3 of the aforequoted agreement, is, therefore, valid in the absence of proof that said agreement was entered into in fraud of creditors.

In connection with par 5 of the aforequoted agreement, in relation to par. 3 thereof, this Court, is of the opinion, and so holds, that the periods of time allowed for making payments under parties of said agreement, must be counted from date of receipt of a copy of this decision by counsel of the parties, this decision constituting the final approval of said agreement, and as to stockholders who are not parties to this cases, from date of notice of the said time extension. The extension of time to pay, as granted in par. 3 of the afore-quoted agreement, has the effect of repealing previous declaration of delinquency of the corresponding shares of stock, and all subscribed shares of stock, except those ordered to be returned as provided in pars. 1 and 2 of said agreement, will therefore be entitled to vote until once again declared delinquent after the expiration of the periods of time set out in par. 3 of said agreement.

Defendants on March 14, 1959, filed a motion for reconsideration, alleging that the decision was partly against the spirit and intention of the parties to the agreement and that portions of the decision, carried "prejudicial eventualities," and asking that the same be amended in the sense that "the payment of obligations of delinquent incorporates has been reduced by the agreement as stated in paragraph 3 and 5" of said agreement; that delinquent stocks cannot be voted until fully paid in accordance with the agreement and that if the plaintiffs in the above entitled cases could not pay in full their obligations within the periods stated in the agreement, the resolutions of delinquency would automatically stand.

On March 18, 1959, plaintiffs, in cases Nos. 13211 and 13212, filed a petition for immediate execution and for preliminary injunction and/or mandamus, praying that a writ be issued, ordering the defendants, as controlling majority of the hold-over board of directors, to hold immediately the long delayed stockholders' meeting, and to allow, the plaintiffs and all the stockholders, with still unpaid subscriptions, to vote all their stocks and subscriptions at said stockholders' meeting, as directed in the decision.

On March 25, 1959, the Court issued an amending decision, pertinent portions of which are hereunder reproduced—

"* * *. After hearing the parties in extensive oral argument, this Court agrees with the defendants that par. 5 of the compromise agreement of the parties, dated September 13, 1958, contemplates a modification and not a repeal of the resolutions of the Board of Directors and of the Stockholders referred to in said agreement. The question is, therefore, to what extent has said resolutions been modified? Considering that the primary intention of each of said resolutions was to effect an early collection of unpaid balance of stock subscriptions and interest thereon, and the moving- consideration for a compromise settlement of the instant cases is likewise the early collection of the obligations of stockholders of the defendant corporation, the extension of time to pay, as granted in par. 3 of said agreement, was clearly intended to cover not only the accrued interest but also the unpaid stock subscription of the stockholders, for to hold otherwise would be to defeat the primary purpose

of early collection of said obligations. Considering the same paramount intention of said resolutions and of the aforesaid compromise agreement, it likewise follows that the extension of time to pay and the reduction of interest embodied in said agreement must apply to all stockholders similarly situated.

"Regarding the right to vote, this Court likewise agrees with the defendants that the facts considered during the negotiations for settlement effected by the parties in the Chambers of the presiding judge do not warrant repeal of the declaration of delinquency and complete restoration of voting rights until full payment of the unpaid stock subscriptions and interest within the time and to the extent mentioned in par. 3 of the aforesaid compromise agreement. To rule otherwise would be to encourage non-payment of the balance of stock subscriptions and thus defeat the paramount intention of the compromise agreement. Stated differently, this Court now holds that the extension of time to pay, as granted in par. 3 of the aforesaid compromise agreement, has the effect of lifting the previous declaration of delinquency effective as of full payment of the balance of said stock subscriptions and interest within the periods of time mentioned in par. 3 of said compromise agreement.

"In view of the uncertainty brought about by the motion for reconsideration and the motion for execution aforementioned, it would be unjust to count the periods of time mentioned in the aforesaid compromise agreement from the date of receipt of the original decision of this Court in these cases. The extension of time to pay should, therefore, be counted from receipt by counsel for the parties of a copy of this amending decision, and from receipt by the other stockholders of notice of said extension of time; and the injunction in the instant case should be deemed in force for the duration of said extensions of time to pay.

"Wherefore, the decision of this Court rendered in these cases on February 20, 1959 is hereby modified in the manner set out above, maintaining said decision in all other respects."

On April 4, 1959, plaintiffs filed a motion for reconsideration and/or new trial, praying that the amending decision dated March 25, 1959, be reconsidered and/or further clarified. On July 10, 1959, the trial court reversed its amending decision in an order, the relevant parts thereof follows :

"Wherefore, by way of amendment to both the original and amending decisions of this Court in the instant case, this Court hereby expressly rides that all shares of the capital stock of the defendant corporation covered by fully paid capital stock shares certificates are entitled to vote in all meetings of the stockholders of this corporation, and Resolutions Nos. 2, 3 and 4 (Exhs. C, C-1 and C-2) of defendant corporation's Board of Directors are hereby nullified in so far as they are inconsistent with this ruling.

The extensions of time to pay, referred to in par. 3 of the settlement-agreement of the parties, will start to run from the date of receipt by counsel for the parties of a copy of this Order, and from receipt by the other stockholders of notice of said extension of time.

The injunction granted in the instant case is hereby dissolved, and the injunction bond filed by the plaintiffs is hereby cancelled and released."

Defendants on August 11, 1959, perfected their appeal against the above ruling, on purely questions of law. Plaintiffs-appellees did not file any brief, manifesting that they were relying on their arguments contained in their motion for reconsideration, dated April 4, 1959 filed with the trial court, (pp. 213 to 218 rec. on appeal) and on the reasons set forth in the trial court's order, dated July 16, 1959, third decision (pp. 219, to 230 R.A.).

Pending decision, the parties were required to show cause why the cases should not be dismissed for having become moot or academic, in view of the fact that the appellees, taking advantage of the decision of the trial court, "had paid all other delinquencies and interest thereon," but the appellants manifested that these cases should be decided on the issues raised, to determine, once and for all, the voting rights of the other delinquent subscribers, in the election of the company's Board of Directors which had been suspended since May 1, 1955,

because of the litigation. The questions posited in the appeal, in view of the above facts would, therefore, be:

- If a stockholder, in a stock corporation, subscribes to a certain number of shares of stock, and he pays only partially, for which he is issued certificates of stock, he is entitled to vote the latter, notwithstanding the fact that he has not paid the balance of his subscription, which has been called for payment or declared delinquent?
- If a stockholder subscribes to a certain number of shares of stock and makes partial payment only, and declared delinquent as to the rest, with interest, should previous payments on account of the capital, be first applied to interest, thus diminishing the voting power of the shares of stock already paid? In other words, if the entire subscribed shares of stock are not paid, the paid shares of stock be deprived of the right to vote, until the entire subscribed shares of stock are fully paid, including interest?
- Has estoppel or waiver, by virtue of the settlement agreement, set in?

Defendants-appellants claim that resolution No. 4 (Exh. C-2), withdrawing or nullifying the voting power of all the aforesaid shares of stock is valid, notwithstanding the existence of partial payments, evidenced by certificates duly issued therefor. They invoke the ruling laid down by the Court in the *Fua Cun vs. Summers* Case (44 Phil., 705, March 27, 1923, pertinent portion of which states:

"In the absence of special agreement to the contrary, a subscriber for a certain number of shares of stock does not, upon payment of one-half of the subscription price become entitled to the issuance of certificates for one-half of the number of shares subscribed for; the subscriber's right consists only in equity entitling him to a certificate for the total number of shares subscribed for by him upon payment of the remaining portion of the subscription price."

The cited case connotes the principle that a partial payment of a subscription, does not entitle the stockholder to a certificate for the total number of shares subscribed by him; his right consists only in equity to a certificate of the total number of shares subscribed for, upon payment of the remaining portion of the subscription price. In other words, it is, contended, as in the present case, that if Baltazar subscribed to 600 shares of stock in a single subscription, and he merely paid for 300 shares, for which he was given fully paid certificates for 300 shares, he cannot vote said 300 shares, in any meeting of the Corporation, until he shall have paid the remaining 300 shares of stock. The saving clause in the quoted pronouncement, "in the absence of agreement to the contrary," reveals that the doctrine is not mandatory, but merely directory and that if "there is an agreement to the contrary," which is not violative of law, the rigor of the pronouncement may be relaxed. The plaintiffs-appellees seem to sustain an adverse concept, postulating that once a stockholder has subscribed to a certain number of shares, although he has made partial payments only, but is issued a certificate for the paid up share of stock, he is entitled to vote the whole number of shares subscribed by him, paid or not, until the said unpaid shares shall have been called for payment or declared delinquent.

The cases at bar do not come under the aegis of the Principle enunciated in the *Fua Cun vs. Summers* case, because it was the practice and procedure, since the inception of the corporation, to issue certificates of stock to its individual subscribers for unpaid shares of stock and gave Voting power to shares of stock fully paid. And even though no agreement existed, the ruling in said case, does not now reflect the correct view on the matter, for better than an agreement or practice, there is the law, which renders the said case of *Fua Cun-Summers*, obsolescent.

Section 37, of the Corporation Law, as amended by Act No. 3518, approved on March 1, 1929, six (6) years after the promulgation of the *Fua-Summers* case (decided in 1923), provides:

"SEC. 37. * * *. No certificate of stock shall be issued to a subscriber as fully paid up until the full par value thereof, or the full subscription in, the case of 110 par stock, has been paid, by him to the corporation. Subscribed shares not fully paid up may be voted provided no subscription call or interest due on subscription is unpaid and delinquent."

The law just quoted was originally section 36 of the corporation law of 1906, which reads as follows:

"Sec. 36. * * *. No certificate of stock shall be issued to a subscriber as fully paid up until the full par value thereof has been paid by him to the corporation. Subscribed shares not fully paid up may be voted provided no subscription is unpaid and delinquent."

As may readily be seen, said Section 37 makes payment of the "par value" as prerequisite for the issuance of certificates of par value stocks, and makes payment of the "full subscription" an prerequisite for the issuance of certificates of no par value stocks. No such distinction was contained in section 36 of our Corporation Law of 1906, corresponding to section 37 now. The present law could have simply provided that no certificate of par value and no par value stock shall be issued to a subscriber, as fully paid up, until the full subscription has been paid him to the corporation, if full payment of subscription were intended as the criterion in the issuance of certificates, for both the par value and no par value stocks. Stated in another way, the present law requires as a condition before a share holder can vote his shares, that his full subscription be, paid in the case of no par value stock; and in case of stock corporation with par value, the stockholder can vote the shares fully paid by him only, irrespective of the unpaid delinquent shares. As well observed by the trial court, a corporation may now, in the absence of provisions in their by-laws to the contrary, apply payments made by subscribers-stockholders, either as: "(a) full payment for the corresponding number of shares of stock, the par value of each of which is covered by such payment; or (b) as payment pro-rata to each and all the entire number of shares subscribed for" (amended decision). In the cases at bar, the defendant-corporation had chosen to apply payments by its stockholders to definite shares of the capital stock shares certificates for said payments; its call for payment of unpaid subscriptions and its declaration of delinquency for nonpayment of said call affecting only the remaining number of shares of its capital stock, for which no fully paid capital stock shares certificates have been issued, "and only these have been legally shorn of their voting rights by said declaration of delinquency." (amended decision)

The third paragraph of the settlement agreement, relates to interest on the unpaid balance of subscription to the capital stock. The second paragraph of resolution No. 3 (Exh. C-I), unilaterally declared as of no value, and cancelled all capital stock shares certificate issued as fully paid up, upon payments made by stockholders, when interest on unpaid subscription from date of subscription were not previously and/or then and there paid. Defendants-appellants, invoking Art. 1253 NCC (Art 1173 of the Old Civil Code) which provides that "if the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered," and relying on an opinion of the Securities and Exchange Commission, claim that said unilateral nullification and/or cancellation of previously issued capital stock shares certificates, was valid. This provision of law, only applies in the absence of verbal or written agreement, to the contrary (8 Manresa, p. 317) ; it is likewise merely directory, and not mandatory. (Art. 1252 NCC) In the present case, the defendant-corporation had applied the payments made by the stockholders to the full par value of the shares of stock subscribed by them, instead of the accrued interest, as shown by the capital stock shares certificate issued for the payments made, and the stockholders had accepted such certificates issued for such payments. This being the case, the said application of payments, must be deemed to have been agreed upon by the Corporation and the stockholders, and the same cannot now be changed without the consent of the stockholders concerned. The Corporation Law and by-laws of the defendant Corporation do not contain any provision, prohibiting the application of stockholders' payments to the full par value of a corporation's capital stock, ahead of the payment of accrued interest for unpaid subscriptions. It would, therefore, result that a corporation may, upon request of an interested stockholder, as his

option, apply payments by them to the full par value of shares of capital stock subscribed, leaving its collection later of the accrued interest on unpaid subscriptions, and that once such option, has been exercised and the corresponding stock certificates have been issued, the corporation can not, by a unilateral act, legally nullify and cancel the capital stock certificates so issued.

It is finally argued by defendants-appellants that the plaintiffs-appellees waived, under the agreement heretofore quoted, the right to enforce the voting power they were claiming to exercise, and upon the principle of estoppel, they are now prohibited from insisting on the existence of such power, ending with the exhortation, that "they should lie upon the bed they helped built, for a lasting peace in the interest of the corporation." It should, however, be stated as heretofore exposed, that certain clauses of the agreement are contrary to law and public policy and would cause injury to plaintiffs-appellees and other stockholders similarly situated. Estoppel cannot be predicated on acts which are prohibited by law or are against public policy (*Benguet Cons. Mining Co. vs. Pineda*, 98 Phil., 711; 53 Off. Gaz., 1961; *Eugenio vs. Perdido*, 97 Phil. 41, III Rep. of the Phil. Digest, p. 269-270).

WHEREFORE, the order of the trial court of July 16, 1959, (1) Expressly Ruling 'that' all shares of the capital stocks of the defendant corporation covered by fully paid capital stock shares of certificates are entitled to vote in all meetings of the stockholders of this corporation and resolutions Nos. 2, 3 and 4 (Exhs. C, C-1 and C-2) of defendant corporation's Board of Directors are hereby nullified in so far as they are inconsistent with this ruling"; and (2) Dissolving the injunction granted, in the cases and releasing the injunction bond filed by the plaintiffs-appellees, is correct and the same should be, as it is hereby affirmed. Costs taxed against the defendants-appellants.

Bengzon, C.J., Bautista Angelo, Concepción, Reyes, J.B.L., Dizon, Regala, and Zaldivar, JJ., concur.

Makalintal, J., concurs in the result.

Order affirmed.

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