

LUNG CHEA KUNG KEE & CO., PLAINTIFF AND APPELLANT, VS. VICENTE ALDANESE, ACTING COLLECTOR OF CUSTOMS, AND CHUA SOCO, DEFENDANTS. VICENTE ALDANESE, APPELLEE.

G.R. No. L-21362. March 06, 1924

Ponente: JOHNS, J.

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JOHNS, J.:

The question presented involves the construction of sections 1316 and 1408 of the Administrative Code, which are as follows:

"SEC. 1316. Delivery of merchandise without production of bill of lading.—When a collector of customs delivers merchandise without the surrender of the proper bill of lading, he may protect himself from any liability to the rightful holder of the bill by requiring the person to whom delivery is made to execute a sufficient bond in an amount greater than the invoice, or manifest, or in the absence of both, greater than the appraised value of the merchandise. Such bond shall run to the Government of the Philippine Islands, for the benefit of whom it may concern, and shall be conditioned for the production of the proper bill of lading or for the satisfaction of any damages occasioned to its lawful holder by reason of wrongful delivery."

"SEC. 1408. Collector of customs not liable in respect of rulings in customs cases.—No collector or other officer of customs shall be in any way personally liable for or on account of any official ruling or decision as to which the person claiming to be aggrieved has the right to obtain either an administrative or judicial review under the provisions of this chapter; and except for a misdelivery of merchandise, a collector of customs shall not, in the absence of his own abuse of authority, be liable to any person for a loss occasioned either by his own official act or the act of his subordinates."

Although section 1316 has been amended, it was in force, as above quoted, at the time the cause of action accrued. It provides that when a collector of customs delivers merchandise without the surrender of the proper bill of lading, he may protect himself from liability by requiring a sufficient bond in the name of the Government for the use and benefit of whom it may concern. It is admitted that no bond was given or required, and that the flour in question was delivered to Chua Soco without the surrender of the bill of lading.

The Collector of Customs contends that, inasmuch as the flour was delivered by a subordinate employee, without his knowledge, consent or approval, he is not liable, and that the remedy, if any, of the plaintiff is against the subordinate employee. That involves the construction of section 1408 above quoted. It specifically provides that

no collector or other officer of customs shall in any way be personally liable for or on account of any official ruling or decision for which an aggrieved claimant has the right of an administrative or judicial review. It then says:

"And except for a misdelivery of merchandise, a collector of customs shall not, in the absence of his own abuse of authority, be liable to any person for a loss occasioned either by his own official act or the act of his subordinates." It provides that in the absence of his own abuse of authority, a collector of customs shall not be liable "to any person for a loss occasioned either by his own official act or the act of his subordinates." In other words, the section specifically provides that a collector shall not be personally liable for any official ruling, and that in the absence of his own abuse of authority, he shall not be liable "to any person for a loss occasioned either by his own official act or the act of his subordinates." But it will be noted that an exception for such liability is made "for a misdelivery of merchandise." The reason for the exception is very apparent. Section 1408 specifically defines his powers and duties as to merchandise evidenced by a bill of lading, and that he may protect himself in the delivery of merchandise by requiring a good and sufficient bond for delivery without a bill of lading. The exception in section 1408 is "for a misdelivery of merchandise," and it is admitted that there was a misdelivery in the instant case.

The Administrative Code specifically defines the powers, duties, and liabilities of a collector of customs.

At the time of the misdelivery, the flour was in his official custody, and, legally speaking, it was under his personal control and supervision. Under the stipulated facts, no one had a right to take or remove the flour without the surrender of the bill of lading, except upon the giving of a good and sufficient bond, and the flour was taken from the official custody of the Collector of Customs without the surrender of the bill of lading or the giving of a bond.

The fact that section 1408 specifies and defines the cases in which the "Collector of customs is not liable," and specifically makes an exception "for a misdelivery of merchandise," clearly implies that the Collector of Customs, as such, is liable for a misdelivery of merchandise.

It will be noted that the section recites: "Either by his own official act or the act of his subordinates." But no such exception is made "for a misdelivery of merchandise." In other words, under section 1408, as to the things therein named and specified, the Collector of Customs is not liable for his official acts, either for himself or his subordinates. The statute having specified the things for which the Collector of Customs is not liable for his own official acts or those of his subordinates, and having specifically excluded "a misdelivery of merchandise" from such nonliability, under every rule of statutory construction, the Collector of Customs is officially liable for "a misdelivery of merchandise," either by himself or his subordinates.

The defendant-cites and relies upon the case of *Robertson vs. Sichel* (127 U. S., 507), where it is held:

"1. The government 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.

"2. A public officer is not responsible for the misfeasances or positive wrongs, or for the nonfeasances or negligences or omissions of duty, of the subagent or servants or other persons, properly employed by or under him, in the discharge of his official duties.

"3. A collector of customs is not personally responsible for the negligence of his subordinates in the custom house department; in order to charge him in such case, he must have been guilty of personal neglect, misfeasance or wrong."

Apparently, the case sustains his contention. There the trunk of a minor girl was detained by the officers for inspection, to determine whether or not it contained any dutiable articles, and during its detention the trunk was destroyed by fire without the fault or negligence of the Collector of Customs, or his subordinates. The decision was based upon those facts.

The Attorney-General has not cited any case, and we apprehend that no decision of any reputable court of last resort will ever be found, holding that under the statute here in question a collector of customs is not officially liable for the acts of his subordinates "for a misdelivery of merchandise."

Every decision is founded upon its own facts, and there is a marked legal distinction between the liability of a Collector of Customs for the burning of a trunk, which is in his official custody, and the wrongful delivery of merchandise, in violation of the express terms of the statute.

If the Collector of Customs is not officially liable for the wrongful delivery of merchandise by one of his subordinates, in legal effect, a shipper would be without any protection whatever. In actual practice a very large percentage of the deliveries of merchandise are made by subordinates of the Collector of Customs, and the amount of such deliveries during a current year involves millions of pesos. In such cases, it is a matter of common knowledge that the redress of the shipper against a subordinate only would be of no value, and would throw the door wide open to all kinds of fraud. It was for such reason that in section 1408 the Legislature, in specifying the matters for which the Collector of Customs is not legally bound, wisely made an exception "for a misdelivery of merchandise." The purpose of the exception is to make the Collector of Customs officially liable in such cases and for the wrongful acts of his subordinates "for a misdelivery of merchandise/"

It is but fair to say, and the record in the instant case shows, that the wrongful delivery was made by a subordinate and without the knowledge, consent, or approval of the Collector of Customs.

It follows that the judgment of the lower court is reversed, and one will be entered here in favor of the plaintiff and against Vicente Aldanese, as Collector of Customs, for the sum of ₱47,816.32, without costs. So ordered.

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

DISSENTING

MALCOLM, J.,

The correct decision of this case hinges upon the resolution of the following question: Is the Collector of Customs liable for the value of merchandise which, without his knowledge, authorization, or consent, has been wrongfully delivered by an employee in his office to a person mentioned in the manifest? The majority, proceeding from one point of view, answer in the affirmative while the writer, although standing alone, resolutely finds in the negative.

It is stipulated by the parties that the flour "arrived at Manila on or about April 6, 1921, manifested as follows:

'Order Lung Chea Kung Kee & Co.—notify Chua Soco;' on April 7, 1921, one Cresenciano Baza, a duly appointed and qualified acting clerk in the Marine Division of the office of the Collector of Customs of Manila, wrongfully and erroneously and without the knowledge, consent, or authorization of the defendant Vicente Aldanese, issued a permit for the delivery of the said 12,500 sacks of flour to one Timoteo Tienzo, a licensed customs broker, upon

the application of the latter as agent for the aforementioned Chua Soco, the said Cresenciano Baza having permitted the delivery of the said flour to Timoteo Tienzo without the surrender of the bill of lading or the filing of a bond for its production in an amount sufficient to cover the value of the said 12,500 sacks of flour as required by the law and the Customs regulations." It is consequently a fair inference that while the flour in question was consigned by the plaintiff to itself at Manila, yet it was intended for Chua Soco since the bill of lading was worded as follows: "Order Lung Chea Kung Kee & Co.— notify Chua Soco," and since, as further appears from the agreed statement of facts, the plaintiff endeavored to collect on the draft accepted by Chua Soco. The mere nonpayment of the said draft does not necessarily avoid the sale so made and does not relieve Chua Soco from responsibility. (Warner, Barnes & Co. vs. Inza [1922], 43 Phil., 505.)

But the majority decision is planted squarely on the provisions of section 1408 of the Administrative Code. The trouble is that a literal meaning is given to the clause "except for a misdelivery of merchandise" without taking into consideration the prior law in the Philippines and without giving effect to the general rule of public officers.

Said section 1408 is derived from section 25 of Act No. 555 as amended by Act No. 1520. The law last mentioned is specific when, in a sentence separate and apart, it states that "No collector shall be personally liable for the laches of his subordinates." But unfortunately this specific and clear statement was so mingled with other provisions in the process of codification as to give rise to the instant uncertainty.

Even, however, under the present status of the law, what the statute means is that where a collector has authorized the delivery of merchandise, he may be liable for losses if, by mistake or otherwise, the merchandise is delivered to the wrong person. This construction gains force when it is recalled that pursuant to section 1316 of the Administrative Code, the collector is given the means whereby he may protect himself against liability by requiring the filing of a bond. But how could the collector avail himself of such protection if the merchandise was delivered without his knowledge, consent, or authorization, as is the case here?

It is a general rule of public officers that a public officer is not liable for the acts or omissions of his subordinates employed by him or working under his direction, if they be considered servants of the Government, unless such officer directs the act complained of to be done, or personally cooperates in the negligence from which the injury results, if he exercises reasonable care in the selection of the subordinates or employees. The reason for the rule is obvious. The Government itself is not responsible for the misfeasances, or wrongs, or negligences, or omissions of duty of its officers, so why should an officer, acting for the Government, be responsible where what is done by the subordinate is without his knowledge, consent, or authorization? As stated by the United States Supreme Court, "Competent persons could not be found to fill positions of the kind (speaking of collectors), 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." (Robertson vs. Sichel [1887], 127 U. S., 507.)

The general rule of public officers find support in every direction. Professor Mechem in his authoritative work on Public Officers, states:

"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." (Section 789.)

"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." (Section 793.)

Ruling Case Law, under the topic "Liability for Subordinates," states:

"Public officers and agents of the government are not liable for the acts or defaults, negligence or omissions of subordinate officials in the public service, whether appointed by them or not, unless they direct the act complained of to be done, or personally co-operate in the negligence from which the injury results." (22 R. C. L., p. 487.)

Corpus Juris, under the subject "Customs Duties, Liability for Acts of Subordinates" states:

"A collector is liable for illegal exactions by his deputies in the performance of their official duties under him, provided the actions of the deputies were within the lawful scope, either actual or apparent, of the authority of the collector's office, but he is not liable for their negligence or default unless he had knowledge of their incompetency at the time of their employment, or had failed to discharge them after having received such knowledge; in other words, unless there is some personal negligence of the collector himself shown, and the loss occurred by reason of such negligence.

"His responsibility for the delivery of imported merchandise to the consignee was met by delivering goods to one who, according to the ship's manifest and the invoice, was the consignee, and who had paid the duty, and the collector was not liable to a transferee of the bill of lading, holding the same as collateral for a draft drawn on the consignee for the price of the goods, which he refused to pay on presentation." (17 C. J., 605, 606.)

The United States Supreme Court gave authoritative and well considered consideration to the point now at issue in the case of *Robertson vs. Sichel*, supra. (Parenthetically it may be remarked that the distinction is now endeavored to be drawn between the decision of the superior court and the instant situation by mention of the fact that the *Robertson vs. Sichel* case pertains to the loss of a trunk while the instant case pertains to the loss of flour, a distinction which is more refined than real, for the principle remains the same.) The United States Supreme Court held that the head of a department, or other superior functionary, "is not in a different position" than the Government. "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." Approval is given in the decision to the case of *Brissac vs. Lawrence* (2 Blatchford, 121). To quote:

"The defendant was the collector of the port of New York. Imported goods belonging to the plaintiff had been deposited in a custom-house warehouse, and were either lost or mislaid there, or were delivered to some person not entitled to them. At the trial it was sought to show carelessness on the part of the defendant, as the head of the custom-house department, in the manner in which the books of the warehouse were kept, and also that the bookkeeper was a person of intemperate habits and unfit for the situation. On the other hand it was proved that the books were kept in conformity with the mode usually adopted at the time for keeping books of that kind;

that the intemperate book-keeper had been discharged; and that, during a period of nineteen months, out of two hundred thousand packages of goods which had been received at the warehouse in question, only two packages had been lost. Mr. Justice Nelson, in charging the jury, submitted to them the question whether the collector had been guilty of personal negligence in respect to the goods. In the course of the charge, the court said: "The collector is not personally responsible for the negligence of his subordinates in the custom-house department, and, therefore, he is not responsible for the negligence of persons employed in the warehouse department. * * * In order to charge the defendant with the loss, it is necessary that the plaintiffs should satisfy you, by affirmative and reasonable testimony, that the collector was personally guilty of negligence in the discharge of his duty, either by misdeed or by omission. * * * This is a suit against the collector, who did not have charge of the goods; and, in order to render him liable, you must find him to have been guilty of personal neglect, misfeasance, or wrong. * * * In view of the fact that the collector of New York has charge of all the business from which two-thirds of the entire revenue of the United States is collected, and has thousands of subordinates, and upon the evidence that only one package out of every one hundred thousand which passed through the hands of those subordinates has been lost, it is strange that this case has been so urgently pressed, with the idea that, upon any principle of equity, much less of law, there could be any liability on the part of the collector.' " (See further 12 Am. & Eng. Ann. Cases, 185; *Rubens vs. Robertson* [1889], 38 Fed., 86; *Derobert vs. Stranahan* [1903], 126 Fed., 581; *District of Columbia vs. Petty* [1912], 220 U. S., 593.)

Regretting, therefore, that duty compels me to dissent, I am of the opinion that under the facts, the law, and the authorities, the Collector of Customs is not liable for the value of merchandise which, without his knowledge, authorization, or consent, has been wrongfully delivered by an employee in his office to a person mentioned in the manifest.

Judgment reversed.

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