

**AMERICAN INSURANCE COMPANY, PLAINTIFF-APPELLANT, VS.
REPUBLIC OF THE PHILIPPINES AND BUREAU OF CUSTOMS,
DEFENDANTS-APPELLEES.**

G.R. No. L-25478. October 23, 1967

Ponente: BENGZON J.P. J.

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BENGZON J.P. J.:

Sometime in May of 1963, the Bureau of Customs received from SS "Turandot" a cargo of cartons of oven heaters from New York, consigned to San Miguel Corporation. Subsequently, the Bureau of Customs failed to deliver 1 carton of 2 pieces of oven heaters worth P690.30.

As insurers of the cargo, American Insurance Co. paid the consignee P690.30.

On October 6, 1964, American Insurance Co. filed a complaint for the recovery of P690.30 against the Republic and the Bureau of Customs in the City Court of Manila. On February 18, 1965, answer was filed, denying liability and alleging immunity from suit.

On May 22, 1965 the City Court ordered the defendants to pay jointly and severally to the plaintiff P690.00 with legal interest from October 6, 1964 plus P100 attorney's fees.

Defendants appealed to the Court of First Instance.

On October 27, 1965, the date set for pre-trial, only plaintiff's counsel appeared. When the court asked from counsel of plaintiff the latter's authority to compromise, the counsel could not present such authority. Whereupon, the Court of First Instance dismissed the complaint for failure of plaintiff to appear.

Plaintiff appealed to Us, after denial of its motion for reconsideration, assailing the order of dismissal as erroneous.

Section 1 of Rule 20 of the new Rules of Court requires that during the pre-trial, the parties and their attorneys shall appear before the court to consider, among other things, the possibility of an amicable settlement. Section 2 of the same rule provides that a party who fails to appear may be non-suited or considered in default. It is clear that the judge has the discretion whether or not to declare a party non-suited. However, the point is not for us now to resolve, it being rendered moot and academic in the light of this Court's decision in *Mobil Philippines Exploration, Inc. v. Customs Arrastre Service and Bureau of Customs*, L-23139, December 17, 1966 where it was held that the Bureau of Customs, as part of the governmental machinery, operates the arrastre service as an incident of the prime governmental function of taxation and as such is immune from suit. The same is true of the Republic of the Philippines in regard to said operation.

WHEREFORE, the appealed order of dismissal is hereby affirmed. No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles and Fernando, JJ., concur.

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