

**INSURANCE COMPANY OF NORTH AMERICA,
PLAINTIFF-APPELLANT, VS. WARNER, BARNES & CO., LTD.,
REPUBLIC OF THE PHILIPPINES AND/OR BUREAU OF CUSTOMS
AND/OR CUSTOMS ARRASTRE SERVICE, DE...**

G.R. No. L-24106. October 31, 1967

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The present appeal was taken by plaintiff Insurance Company of North America from the order of the Court of First Instance of Manila of December 7, 1964, dismissing the complaint for lack of jurisdiction over the defendants (Republic of the Philippines, the Bureau of Customs and the Customs Arrastre Service) and over the subject-matter of the suit.

The facts are not disputed. On or about September 23, 1963 Ford Motor Co., Ltd., London, shipped a quantity of merchandise on board the SS "Saikyo Maru", consigned to the order of Security Bank and Trust Company, Manila, with arrival notice to Manila Trading and Supply Company, Manila. The shipment consisted of auto parts, bodies, chassis, frames and other parts for trucks, covered by Bill of Lading No. 46 and insured with the plaintiff. The vessel arrived at the port of Manila on or about November 2, 1963 and allegedly discharged the shipment into the custody of the Bureau of Customs as arrastre operator. The goods were then delivered to the consignee in damaged condition.

Claims were filed both with the Bureau of Customs and with the insurer, on the strength of which the latter paid to the consignee the amount of P2,243.92. Then as subrogee of the rights of the consignee the plaintiff sued, as alternative defendants, Warner, Barnes & Co., Ltd., operator of SS "Saikyo Maru" and the Republic of the Philippines and/or Bureau of Custom and/or Customs Arrastre Service. The defendants other than Warner, Barnes & Co., Ltd. moved for the dismissal of the complaint on the ground that the court had no jurisdiction over them and over the subject matter of the suit. The trial court granted the motion as aforesaid, holding that the Bureau of Customs, being an agency of the government, cannot be sued without its consent and that the amount of the claim was below the limit cognizable by the Court of First Instance.

1. On the first ground the order of dismissal is correct. A long line of decisions has affirmed the non-suability of the Bureau of Customs in a case like the present. Thus in *Equitable Insurance & Casualty Co., Inc. vs. Smith, Bell & Co., (PHILIPPINES) Inc.*, G. R. No. L-24383, August 26, 1967, we held:

"By all means, the question thus raised is not untrodden ground. We have heretofore declared that the Bureau of Customs cannot be a party defendant in a suit. Because, it is neither a natural nor a juridical person nor an entity authorized by law to be sued. An arm of the Department of Finance, it has no personality of its own, apart from the national government. Arrastre service, it is true, is a proprietary function. But just the same, it is a necessary incident to the primary governmental job of assessing and collecting lawful duties, fees, charges, fines, and penalties. Thus, regardless of the merits of plaintiff's case, obvious reasons of public policy dictate that the present action should not be allowed standing in court - it is a claim for money against the State itself.

And the State has not consented to the suit.

Statutory provisions waiving State immunity are construed in strictissimi juris. For, waiver of immunity is in derogation of sovereignty. And, this claim should have been lodged with the Auditor General, upon the procedure delineated in Commonwealth Act 327.

So it is that we have ruled, upon situations parallel to the present, that action against the Bureau of Customs must be dismissed. There is by now impressive unanimity of jurisprudence on this point (*Mobil Philippines Exploration, Inc. vs. Customs Arrastre Service* L-23139, December 17, 1966; *North British & Mercantile Insurance Co., Ltd. vs. Isthmian Lines, Inc.*, L-26237, July 10, 1967; *Insurance Company of North America vs. Republic*, L-26532, July 10, 1967; *Insurance Company of North America vs. Republic*, L-24520, July 11, 1967; *Insurance Company of North America vs. Republic*, L-25662, July 21, 1967; *Manila Electric Company vs. Customs Arrastre Service*, L-25515, July 24, 1967; *Shell Refining Co. (Phil.) Inc. vs. Manila Port Service*, L-24930, July 31, 1967; *The American Insurance Company vs. Macondray & Co., Inc.*, L-24031, August 19, 1967). No new argument has been advanced which would give cause or reason for us to override our previous decisions. We do not now propose to depart from the ruling therein expressed."

Many other similar decisions have since then been promulgated.

2. On the question of the lower court's jurisdiction over the subject matter of the suit the appeal must be sustained. The cause of action against Warner, Barnes & Co. Ltd. as operator of the carrying vessel is one of admiralty and hence is within the jurisdiction of the Court of First Instance. Although the claim against the Bureau of Customs as arrastre operator is an ordinary civil suit which would be outside such jurisdiction by virtue of the amount involved, the two may be joined in one action alone. In *Rizal Surety and Insurance Company vs. Manila Railroad Company, et al.*, G. R. No. L-20875, April 30, 1966, we said;

"At the time the complaint was filed, plaintiff did not know at what precise stage of the series of transactions the loss complained of occurred. If the loss took place in transit, C.F. Sharp & Co., Inc. would be liable therefor; but if the loss occurred after the goods were loaded and discharged from the carrying vessel, the Manila Port Service would bear such loss. Hence, the joinder of causes of action and parties defendants in the alternative which is permitted by Section 5 of Rule 2 of the Rules of Court, quoted hereunder:

"SEC. 5. Joinder of causes of action.- Subject to rules regarding jurisdiction, venue and joinder of parties, a party may in one pleading state, in the alternative or otherwise, as many causes of action as he may have against an opposing party (a) if the said causes of action arise out of the, same contract, transaction or relation between the parties, or (b) if the causes of action are for demands for money, or are of the same nature and character."

'In the cases falling under clause (b) the jurisdiction shall be determined by the aggregate amount of the demands, if for money, or by their nature and character, if otherwise.'

"And since one of the causes of action is cognizable by the Court of First Instance the suit should be filed, as was correctly done by the plaintiff, in said court, notwithstanding that the other cause of action -if standing alone - would fall within the jurisdiction of the municipal court, by reason of the amount of the demand. (*Sapico vs. Manila Oceanic Lines*, L-18776, January 30, 1964) In *International Harvester Co. of the Philippines v. Judge Aragon*, (supra, note 1.) where a similar action was filed with the municipal court, we held that the municipal lacked jurisdiction over the case inasmuch as one of the alternative causes of action, against the shipping firm, was an action in admiralty, cognizable by Court of First Instance." (See also *Hanover Insurance Company vs. Manila Port Service and Manila Railroad Company*, G. R. No. L-20976, January 23, 1967.)

In any event, since the action was properly dismissed with respect to the defendants Republic of the Philippines and the Bureau of Customs as operator of the arrastre service, the same may proceed as against the other defendant. The case is therefore remanded for further proceeding only insofar as Warner Barnes Co., Ltd. is

concerned. No pronouncement as to costs.

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

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