

FERNANDO MENDOZA PETITIONER AND APPELLEE, VS. EDILBERTO Y. DAVID, ET AL., RESPONDENTS AND APPELLANTS.*G.R. No. L-9452. March 27, 1961*

Ponente: BAUTISTA ANGELO, J.

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On May 28, 1954, an importation of 1,000 crates of onions arrived at the port of Manila for which no entry was filed by the importer. Because of such failure the Collector of Customs advertised the merchandise for sale at public auction under the authority of Section 1395(c) of the Revised Administrative Code. Having been notified of the sale because of a previous shipment he claimed from the customs office, one Fernando Mendoza wrote a letter to the Collector of Customs reclaiming the merchandise on the strength of Section 1324 of the Revised Administrative Code. The request was denied on the ground that Mendoza failed to comply with the requirements of the law, and his appeal to the Secretary of Finance having failed, he filed on July 28, 1954 in the Court of First Instance of Manila a petition for mandamus with preliminary injunction seeking to restrain the Collector of Customs from selling the onions at public auction and to compel him to make immediate delivery thereof to petitioner.

Meanwhile the Collector ordered the seizure of the shipment because of certain violation of customs laws committed by Mendoza thus changing the action taken thereon from sale to forfeiture. Accordingly, seizure Case No. 1731 was instituted at the customs court.

After a hearing was had on the petition for preliminary injunction, the court on August 12, 1954 issued an order granting the same upon the filing by petitioner of a bond in, the amount of P5,000.00. The writ contains two parts: (1) it restrains respondents from selling the onions at public auction, and (2) it orders respondents to make immediate delivery of said onions to petitioner. Respondents filed a motion praying that the bond be increased, but when the customs authorities discovered that out of the 1,000 crates of onions only 96 were found to be in good condition, the court denied the motion.

On August 21, 1954, petitioner sought immediate compliance with the writ, but when he found that the remaining 96 crates of onions were greatly deteriorated, he gave formal notice to the Collector that he was abandoning them pursuant to Section 1321 of the Revised Administrative Code. Subsequently, he filed a motion to dismiss, which was granted on October 5, 1954. Three days thereafter respondents moved for reconsideration praying that the bond be declared forfeited for the protection of the government. This motion was denied, the court stating that it had no authority to order the forfeiture of the bond because that is a positive relief that should have been availed of before dismissal by filing a counterclaim for damages. On December 10, 1954, respondents filed a motion for reconsideration and for leave to present evidence on their counterclaim if allowed. Again this motion was denied because "it appears that the order of dismissal was served on respondents' counsel on October 12, 1954; he filed a motion for reconsideration on October 27, 1954; he received the order denying the motion for reconsideration on December 4, 1954; and he filed the present motion on December 20, 1954, so that discounting the period during which the first motion for reconsideration was pending, more than 30 days had passed before he filed the 2nd

motion for reconsideration and for counterclaim, so that the order of dismissal had already become final." And on March 12, 1955, respondents filed a petition for relief alleging that an error was committed in the computation of the period for filing their motion for reconsideration, but the court denied the motion arguing that while it committed an involuntary error in the computation of the period it however believed that with or without the injunction granted to petitioner the government could still collect the revenues due from him. Hence this appeal.

In denying appellants' petition to set aside its order of dismissal in order that they may set up a counterclaim for the revenues due the government and secure the forfeiture of the injunction bond filed by appellee the trial court stated that there could be no room for liability under the bond because, as appellants themselves admit, instead of securing the release of the onions by enforcing the writ of injunction, appellee abandoned them to respondents for having discovered that the remaining portion of the merchandise was already greatly deteriorated, and that there was no room for disturbing the dismissal already ordered to permit respondents to present their counterclaim it appearing that their motion for reconsideration was filed out of time thereby causing said order to become final.

Appellants now argue that the above finding is untenable not only because the trial court had admitted that it committed an involuntary error in computing the period within which their motion for reconsideration could be filed which should have paved the way for the granting of their motion for relief, but also because it entertained an erroneous view of the nature of the writ of injunction it issued on the matter. They argue that its restraining order precluded the customs officials from collecting the charges that should be paid by the importer out of the proceeds of the sale of the imported merchandise under Section 1797 of the Revised Administrative Code.

There is no merit in this contention. It appears that because of the importer's failure to make an entry of the importation of the merchandise in question the Collector of Customs advertised the merchandise for sale at public auction under the authority of Section 1395 (c) of the Revised Administrative Code. The importer tried to reclaim the merchandise, which was denied, and his appeal to the Secretary of Finance having failed, he filed a petition for mandamus with preliminary injunction to restrain the Collector from selling the merchandise and to compel its delivery to him. Meanwhile, however, the Collector ordered the seizure of the merchandise thus changing the action taken from sale to forfeiture. Then the court granted the petition for preliminary injunction upon the filing of a bond of P5,000.00. But when days later appellee sought the enforcement of the writ and found that the remaining 96 crates of onions were already greatly deteriorated he gave notice to the Collector that he was abandoning them pursuant to Section 1321 of the Revised Administrative Code. In view of such abandonment the case was dismissed.

It would, therefore, appear that notwithstanding the issuance of the writ of injunction the merchandise never left the possession of the Collector of Customs. Since its arrival on May 28, 1954 to August 21, 1954, when the court ordered immediate compliance with said writ, it remained under the exclusive custody of said official, or his representatives. In other words, the purpose of the injunction has never been attained, and so there is nothing for which the injunction bond could be made liable.

It is true that because of the issuance of the writ of injunction the proceedings regarding forfeiture had been temporarily stayed, but this is of no consequence considering that in case of forfeiture only the merchandise forfeited stands responsible for the payment of the customs liability. In other words the injunction bond answers for the release of the merchandise the former merely taking the place of the latter, and if the release is not effected there is no valid reason for forfeiting the bond. In this respect, we find correct the finding of the trial court.

There is no point in the claim that said bond responds not merely for the release of the merchandise but for the payment of all the charges that the importer may be found answerable under Section 1397 of the Revised Administrative Code. In the first place, such general liability does not appear in the bond, and, in the second, the

liability of an importer is limited to the value of the imported merchandise. This can clearly be inferred from an examination of the provisions of Sections 1395, 1397 and 1398 of the Revised Administrative Code. Thus, Section 1395 provides that the property in customs custody may be sold at public auction if no entry thereof is made within the period prescribed therein. Section 1397 regulates the disposition of the proceeds of the sale, but it says nothing that if the same are insufficient the importer should be liable for the deficiency. And while Section 1398 provides that the Surplus of the proceeds of the sale after deducting all the charges shall be paid to the importer, with regard to forfeited goods it expressly decrees that no part of the shall be returned. The clear implication is that in case of forfeiture the maximum penalty imposable on seized merchandise is the forfeiture itself.

When, therefore, the trial court ordered the dismissal of the case with the consequent setting aside of the writ of injunction because appellee sought to abandon the merchandise to respondents, the logical result was that the Collector was left free to continue with the seizure proceeding with a view to the final disposition of the merchandise. Hence, the trial court was correct in stating that said dismissal did not preclude the government from collecting whatever charges it may find due from appellee relative to the importation in question.

Wherefore, the orders appealed from are affirmed, without pronouncement as to costs.

Bengzon, Acting C. J., Padilla, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, and Dizon JJ., concur.

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