

BENGUET EXPLORATION, INC., PETITIONER, VS. COURT OF APPEALS, SWITZERLAND GENERAL INSURANCE, CO., LTD., AND SEAWOOD SHIPPING, INC., RESPONDENTS.*G.R. No. 117434. February 09, 2001*

Ponente: MENDOZA, J.

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This is a petition for review on certiorari of the decision, dated June 30, 1994, and resolution, dated September 29, 1994, of the Court of Appeals[1] which affirmed the decision of the Regional Trial Court, Branch 149, Makati, dismissing the complaints filed by petitioner against herein private respondents, and denied petitioner's motion for reconsideration, respectively.

The background of this case is as follows:

On November 29, 1985, petitioner Benguet Exploration, Inc. (Benguet) filed a complaint for damages against Seawood Shipping, Inc. (Seawood Shipping) with the Regional Trial Court of Makati, which was docketed as Civil Case No. 12394 and assigned to Branch 149.[2] On March 4, 1986, petitioner Benguet filed another complaint for damages against respondent Switzerland General Insurance, Co., Ltd. (Switzerland Insurance), which was docketed as Civil Case No. 13085[3] and assigned to Branch 148 of the court.

The two cases were consolidated. Switzerland Insurance filed a third-party complaint against Seawood Shipping, praying that the latter be ordered to indemnify it for whatever might be adjudged against it in favor of petitioner.[4] Thereafter, the cases were jointly tried, during which petitioner Benguet presented its employees, Rogelio Lumibao and Ernesto Cayabyab, as witnesses.

Rogelio Lumibao, marketing assistant of Benguet, was in charge of exportation. His responsibilities included the documentation of export products, presentations with banks, and other duties connected with the export of products. He explained that private respondent Seawood Shipping was chartered by petitioner Benguet to transport copper concentrates. The bill of lading (Exh. A) stated that the cargo, consisting of 2,243.496 wet metric tons of copper concentrates, was loaded on board Sangkulirang No. 3 at Poro Point, San Fernando, La Union. It was insured by Switzerland Insurance (marine insurance policy was marked Exh. C). When the cargo was unloaded in Japan, however, Rogelio Lumibao received a report (Exh. B), dated August 19, 1985, from a surveyor in Japan stating that the cargo was 355 metric tons short of the amount stated in the bill of lading. For this reason, petitioner Benguet made a claim of the loss to Seawood Shipping and Switzerland Insurance. In its letter, dated August 21, 1985 (Exh. D), petitioner Benguet made a formal demand for the value of the alleged shortage. As both Seawood Shipping and Switzerland Insurance refused the demand, petitioner Benguet brought these cases against Seawood Shipping and Switzerland Insurance.[5]

On cross-examination, Lumibao admitted that he did not see the actual loading of the cargo at Poro Point and that his knowledge was limited to what was contained in the bill of lading which he received about two days after the loading. Lumibao testified that at Camp 6, Kennon Road, Baguio, the copper concentrates were weighed prior to

being transported to Poro Point, where they were once more weighed before being loaded on the vessel. But again he admitted that he had not seen the actual weighing and loading of the copper concentrates because he was not the one in charge of the operation. Nor was he in Japan when the cargo was unloaded. He also did not know how to perform the procedure for weighing cargo. Thus, he could not determine the truth or falsity of the contents of the draft survey. He only knew that there was in fact a shortage based on his reading of the draft report.[6] Further, Lumibao testified that, although he prepared the export declaration, he did not prepare the bill of lading. The bill of lading was made on the basis of the draft survey conducted by the Overseas Merchandise Inspection Co., Ltd. or OMIC.[7] Some other person undertook the weighing of the cargo, and Lumibao was only informed by telephone of the cargo's weight during its loading and unloading.

Lumibao had nothing to do with the preparation of the bill of lading, the weighing of the copper concentrates, and the shipment of the cargo. He did not accompany the trucks which transferred the cargo from Baguio to Poro Point. He was not on the ship when the cargo was loaded at Poro Point. Nor did he know if spillage occurred during the loading or unloading of the copper concentrates.

Lumibao said that the buyer of the copper concentrates was the Brandeis Intsel Co., Inc. Upon receipt of the cargo, Brandeis Intsel Co., Inc. paid for the cargo based on its weight in dry metric tons, or 90 percent more or less of the price of 2,243.496 tons, the weight of the cargo in wet metric tons. With regard to the insurance policy, he testified that petitioner Benguet made no objection to any of the terms stated on the face of the policy.[8]

Ernesto Cayabyab next testified for petitioner. He had been with Benguet for 13 years and, at the time of his testimony, he was secretary of Nil Alejandre, manager of Benguet. According to Cayabyab, on July 28, 1985, he was sent to the warehouse (bodega) at Poro Point, La Union to assist in the loading of the copper concentrates. These copper concentrates were to be loaded on the ship Sangkulirang No. 3. Cayabyab said he was present when the cargo was loaded on the ship, as evidenced by the Certificate of Loading (Exh. E), Certificate of Weight (Exh. F), and the Mate's Receipt (Exh. G), all dated July 28, 1985. According to Cayabyab, the Marine Surveyor and the Chief Mate would go around the boat to determine how much was loaded on the ship. Cayabyab stated that he saw petitioner Benguet's representative and his immediate superior, Mr. Alejandre, and the Inspector of Customs, Mr. Cardenas, sign the Certificate of Weight. Cayabyab also witnessed the ship captain sign the Certificate of Weight,[9] which stated therein that 2,243.496 wet metric tons of copper concentrates were loaded on the ship.[10] Cayabyab likewise confirmed the authenticity of the Mate's Receipt, saying that he witnessed the Chief Mate sign the document.[11]

When cross-examined, Cayabyab said that, as a secretary, his duties included computing the company's daily main production in the mine site and accompanying his superior, Mr. Alejandre, during shipments. He explained that the copper concentrates were transported by dump trucks from the mining site to Poro Point for over a month, possibly even three to six months. Cayabyab went to Poro Point on July 27, 1985 to witness the loading of the copper concentrates on the vessel Sangkulirang No. 3. But the copper concentrates had already been delivered and stored in a bodega when he arrived. These concentrates were placed on the cemented ground inside the bodega after their weight was recorded. Describing the procedure for weighing, he said that the trucks, without the copper concentrates, were weighed. Then, after they had been loaded with copper concentrates, the trucks were placed in the bodega and weighed again. To determine the weight of the copper concentrates, the weight of the trucks was deducted from the weight of the trucks loaded with copper concentrates. The copper concentrates were then loaded on the ship by means of a conveyor at the average rate of 400 tons an hour. Cayabyab did not know, however, how many trucks were used to load the entire cargo of the copper concentrates nor did he know exactly how many hours were spent loading the copper concentrates to the ship. He could only remember that he reported for work in the morning and that he worked overtime because he had to wait until the loading of the cargo was

finished before he could leave. During the loading, he moved from place to place, and his attention was sometimes distracted. Thus, he could not tell with certainty that no spillage took place during the loading. The figure of 2,243.496 wet metric tons was computed by the Marine Surveyor and the Chief Mate.[12]

Respondent Switzerland Insurance then presented its evidence. Three witnesses, Eduardo Pantoja, Anastacio Fabian, and Edgardo Diño, testified for it.

Eduardo Pantoja, assistant branch manager of respondent Switzerland Insurance in the Philippines, testified that he prepared the data and conditions of the marine insurance policy of petitioner Benguet using information furnished by the latter, although some of the conditions attached to the policy were conditions Switzerland Insurance attached to all the marine policies issued by it. Pantoja stated that the figure of 2,243.496 wet metric tons contained in the policy of Benguet was taken from the latter's declaration. Switzerland Insurance relied on the value of the cargo declared by the insured on the basis of the principle of *uberrimae fidei*, i.e., the insured must act in the utmost good faith.[13] One of the conditions set forth in the marine policy (Exh. 8) was that the "[w]arranted vessel is equipped with steel centerline bulk head." According to Pantoja, this condition was specifically included in the policy because the nature of the cargo warranted the same, and Switzerland Insurance would not have accepted the policy had such condition not been attached. The purpose of the centerline bulkhead was to prevent the copper concentrates from shifting while being transported on the ship. Upon verification by Certified Adjusters, Inc., adjusters of Switzerland Insurance, it was found that the vessel Sangkulirang No. 3 did not have a steel centerline bulkhead. Pantoja identified a letter, dated February 13, 1986, sent by his company to petitioner Benguet canceling its insurance contract because the carrying vessel was not equipped with a steel centerline bulkhead as warranted under the policy (Exh. 7-a). Enclosed was Check No. HSBC 419463 for P98,174.43 representing the refund by Switzerland Insurance of the premium payments, documentary stamps, and premium taxes paid by petitioner Benguet (Exh. 7). He testified that Switzerland Insurance paid its legal counsel P40,000.00 as attorney's fees plus appearance fees.[14]

On cross-examination, Pantoja explained that the company had its own system of determining various rates of insurance. Several factors were taken into consideration, such as the nature of the goods, the manner by which they were packed, and the destination of the cargo. For example, Switzerland Insurance would anticipate pilferages if the cargo involved household goods or, in the case of chemicals, it would consider the possibility of spillage. Pantoja, however, stated that he did not make any investigation in this case but used only his previous experience and project knowledge in dealing with similar cases. He admitted that Switzerland Insurance checked whether the ship had a steel centerline bulkhead only after a claim had been made by petitioner Benguet. He explained, however, that it was impossible for them to make the investigation before the execution of the marine policy because they had only one day to check whether the ship had a steel centerline bulkhead and the ship at that time was not in Manila but in Poro Point. He reiterated that good faith dealing with the insured included relying on the truth of the latter's representations. There was little risk involved in relying on the insured's representations because the company would not have accepted the risk if it found that the conditions in the policy had not been complied with. Switzerland Insurance refused Benguet's demand because non-compliance with the condition that the ship be equipped with a steel centerline bulkhead rendered the marine insurance policy null and void from the beginning. This is why Switzerland Insurance refunded the premium paid by petitioner Benguet. Pantoja stated that petitioner Benguet did not claim that the loss was caused by the shipping of the cargo because it did not know the cause of the shortage.[15]

Another witness for Switzerland Insurance was Anastacio Fabian, the marine manager of Certified Adjusters, Inc. He testified that he went to Poro Point where the shipment was loaded for transport to Japan. It took him almost two months to finish his investigation and to come up with a written report (Exh. 12). He prepared a letter, dated

January 31, 1986, seeking a certification from Capt. Jae Jang of Sangkulirang No. 3 on whether the ship was equipped with a steel centerline bulkhead (Exh. 5). In response thereto, respondent Seawood Shipping sent a letter, dated February 1, 1986, stating therein that the vessel was not equipped with a steel centerline bulkhead (Exh. 6). This steel centerline bulkhead was a steel separation of a vessel for the purpose of preventing the vessel from sinking, especially in heavy weather. Pictures of the ship were taken by Wise Insurance showing that the vessel did not have a steel centerline bulkhead (Exhs. 15 to 15-H).

Fabian also identified petitioner Benguet's export declaration (Exh. 11) which provides therein that the cargo loaded on the ship weighed 2,050 wet metric tons or 1,845 dry metric tons.[16] On further direct examination, he testified that Certified Adjusters, Inc.'s president, Mr. Edgardo Diño, wrote a letter, dated January 13, 1986, to the shipping company inquiring as to the circumstances surrounding the loss of the cargo (Exh. 17). Seawood Shipping responded to Certified Adjusters, Inc. in a letter, dated January 16, 1986, explaining that the weight of the cargo might have been increased by the rains which occurred during the loading, and that the shortage upon unloading might be due to the moisture which evaporated during the voyage from the Philippines to Japan. Fabian testified that the moisture on the copper concentrates increased the weight of the cargo.

Fabian said that during his investigation he asked how and when the shipment was loaded in the vessel and where it was loaded. He also checked records of the loading of the cargo. Although he admitted that the records show that a shortage of the copper concentrates had occurred when these reached Japan, he attributed it to the rains which occurred during the loading of the copper concentrates which increased their weight, although he conceded that it was not possible that the rains would cause a shortage of around 300 metric tons. He did not know what could have caused the shortage.[17]

The last witness to testify for the defense was Edgardo Diño, president and general manager of Certified Adjusters, Inc. He testified that his company conducted an investigation and found that the vessel Sangkulirang No. 3 was not equipped with a steel centerline bulkhead. The main function of the steel centerline bulkhead was to prevent shifting of the copper concentrates during transport. If there was no steel centerline bulkhead, the vessel was liable to sink. He stated that the ship had two holds, one of which was loaded with petitioner Benguet's copper concentrates and the other with a Lepanto shipment. Diño identified photographs showing that only a wooden partition separated the two cargoes on both holds (Exhs. 15-A to 15-G). He testified that his company wrote a letter to the shipping company inquiring about the shortage which occurred on petitioner Benguet's copper concentrates. He expressed doubt that the loss of moisture of the copper concentrates caused the shortage because these were actually mixed with some water to keep them from heating up or to prevent spontaneous combustion. According to Diño, it was possible that some shifting of the cargo occurred as indicated by the photographs of the ship.[18]

Based on the evidence presented, the trial court rendered its decision on July 2, 1990 dismissing petitioner's complaint as well as Switzerland Insurance's third-party complaint against Seawood Shipping.

On appeal, its decision was affirmed by the Court of Appeals.[19] Petitioner Benguet moved for reconsideration, but its motion was denied.[20] Hence this petition.

Petitioner Benguet contends that the Court of Appeals gravely erred in ruling that it failed to establish the loss or shortage of the subject cargo because such loss was sufficiently established by documentary and testimonial evidence, as well as the admissions of private respondents.[21] Petitioner argues that documents regarding the tonnage of the copper concentrates have been properly identified and that the bill of lading (Exh. A), the Certificate of Weight (Exh. F), and the Mate's Receipt (Exh. G), all of which stated that 2,243.496 wet metric tons of copper concentrates were loaded on the ship, create a prima facie presumption that such amount was indeed

what was loaded on the vessel. Petitioner asserts that the Draft Survey Report of OMIC (Exh. B) was sufficient evidence to prove that the cargo which arrived in Japan had a shortage of 355 wet metric tons.

We find petitioner's contentions to be without merit.

First. It is settled that only questions of law may be raised on appeal by certiorari under Rule 45. The trial court, having heard the witnesses and observed their demeanor and manner of testifying, is in a better position to decide the question of their credibility. Hence, unless the factual findings complained of are not supported by the evidence on record or the assailed judgment is based on a misapprehension of facts, the findings of the trial court must be accorded the highest respect, even finality, by this Court.[22] It is noteworthy that the Court of Appeals made the same factual findings as did the trial court.[23]

Contrary to this rule, petitioner is raising questions of facts as it seeks an evaluation of the evidence presented by the parties. However, we find no basis for concluding that both the trial court and the Court of Appeals misappreciated the evidence in this case. To the contrary, we find that petitioner failed to present evidence to prove that the weight of the copper concentrates actually loaded on the ship Sangkulirang No. 3 was 2,243.496 wet metric tons and that there was a shortage of 355 metric tons when the cargo was discharged in Japan.

Petitioner's own witness, Rogelio Lumibao, admitted that he was not present at the actual loading of the cargo at Poro Point, his information being limited to what was contained in the bill of lading. As he was not in charge of the operation, he did not see the actual weighing and loading of the copper concentrates. Nor did he prepare the bill of lading. He only verified the weight of the cargo, from the time it was loaded on the ship to the time it was unloaded in Japan, through the telephone. Neither was he present when the cargo was discharged in Japan.[24] Thus, Lumibao testified:

Q Now Exhibit A is a bill of lading which you identified?

A Yes, sir.

Q Do you have anything to do in the preparation of this bill of lading?

A None, sir.

Q

In other words, you did not verify if the weight stated in the bill of lading was the actual weight of the copper concentrate loaded in the ship of the defendant Seawood Shipping Inc.?

....

A The bill of lading is prepared on the basis of the draft survey. That is the procedure.

Q And who undertakes the draft survey?

A For that particular shipment we required or hired the services of OMIC.

Q

In other words, your draft survey is from the point of origin to Poro Point up to the point of destination, Onahama, Japan, was done by OMIC?

A Yes, sir.

Q And you have nothing to do with OMIC?

A None, sir.

Q You are not an employee of OMIC?

A No, sir.

Q Are you connected with it in any way?

A No, sir.

Q

In the Bill of Lading, you identified this document a xerox copy of the supposed original Bill of Lading and marked as Exh. A, are the wordings and figures "copper concentrate 2,243.496 WMT" this means weight per metric ton?

A Yes, sir.

Q

Did you have it [verified] if this was the actual weight loaded on the ship of the defendant Seawood, Shipping, Inc.?

A We were advised by the OMIC surveyor that the weight was loaded.

Q Did you personally verify if these figures are true?

A Yes, by phone.

Q Did you participate in weighing?

A No, sir. Just by phone.

Q In other words somebody else made the weighing not you?

A Yes, sir.

Q Did you personally do the verification of the actual weight loaded in the ship?

. . . .

A Yes, sir by phone.

Q So you are informed [of] the weight actually loaded by phone?

A Yes, sir.

Q Do you always verify by phone?

A

That is only preliminary, while waiting what is the concluding things. (sic) That is after the surveyor has submitted the report to us.

Q So in other words, all the time you have been basing your testimony on reports prepared by other person?

A Yes, sir.

Q In fact, you have nothing to do with the preparation of the Bill of Lading?

A Yes, sir.

Q

You have nothing to do with the weighing of the copper concentrate? . . . You have nothing to do [with] the transport of the copper concentrate from Camp 6, Baguio to Poro Point?

A None, sir.

Q

You did not even accompany the truck?

A No, sir.

Q You were not at the shipside when this copper concentrate was loaded?

A No, sir.

Q You did not know whether there was spillage when or while loading copper concentrates?

A Yes, sir.

Q Neither were you on the ship on its way to Japan, were you?

A No, sir.

Q You were not at Onahama, Japan, the port of destination?

A No, sir.[25]

On the other hand, Ernesto Cayabyab testified that he was at Poro Point when the copper concentrates were being loaded on the ship. Although he was present when the Certificate of Loading (Exh. E), Certificate of Weight (Exh. F), and the Mate's Receipt (Exh. G) were signed at the loading site,[26] he admitted that he could not say for certain that no spillage occurred during the loading of the cargo on the ship because his attention was not on the cargo at all times.[27]

It is evident that petitioner's witnesses had no personal knowledge of the actual weight of copper concentrates loaded on the vessel and discharged in Japan. Lumibao had no part in the preparation of the bill of lading (Exh. A) and the Draft Survey Report prepared by OMIC (Exh. B). Nor was he present when the copper concentrates were loaded on the vessel or when the cargo was unloaded in Japan. He merely relied on the declarations made by other persons that 2,243.496 wet metric tons were indeed loaded on Sangkulirang No. 3 and that the cargo was short by 355 metric tons when unloaded in Japan. The same may be said of witness Cayabyab. While present at the loading site and familiar with the procedure followed in loading the cargo, he admitted that he could not state for certain that no spillage occurred as his attention was not at all times focused on the loading operation. Moreover, none of the documents he identified, i.e., Certificate of Loading, Certificate of Weight, and Mate's Receipt, were signed by him. He only witnessed the signing of these documents by other people. Hence, he was in no position to testify as to the truth or falsity of the figures contained therein. The testimonies of these witnesses were thus hearsay. It has been held:

Any evidence, whether oral or documentary, is hearsay if its probative value is not based on the personal knowledge of the witness but on the knowledge of another person who is not on the witness stand. Hearsay evidence, whether objected to or not, has no probative value unless the proponent can show that the evidence falls within the exceptions to the hearsay evidence rule.[28]

Second. Petitioner contends that the genuineness and due execution of the documents presented, i.e., Bill of Lading, Certificate of Loading, Certificate of Weight, Mate's Receipt, were properly established by the testimony of its witness, Ernesto Cayabyab, and that as a result, there is a prima facie presumption that their contents are

true.

This contention has no merit. The admission of the due execution and genuineness of a document simply means that "the party whose signature it bears admits that he signed it or that it was signed by another for him with his authority; that at the time it was signed it was in words and figures exactly as set out in the pleading of the party relying upon it; that the document was delivered; and that any formal requisites required by law, such as a seal, an acknowledgment, or revenue stamp, which it lacks, are waived by him." [29] In another case, we held that "When the law makes use of the phrase 'genuineness and due execution of the instrument' it means nothing more than that the instrument is not spurious, counterfeit, or of different import on its face from the one executed." [30] It is equally true, however, that —

Execution can only refer to the actual making and delivery, but it cannot involve other matters without enlarging its meaning beyond reason. The only object of the rule was to enable a plaintiff to make out a prima facie, not a conclusive case, and it cannot preclude a defendant from introducing any defense on the merits which does not contradict the execution of the instrument introduced in evidence. [31]

In this case, respondents presented evidence which casts doubt on the veracity of these documents. Respondent Switzerland Insurance presented Export Declaration No. 1131/85 (Exh. 11) [32] which petitioner's own witness, Rogelio Lumibao, prepared, [33] in which it was stated that the copper concentrates to be transported to Japan had a gross weight of only 2,050 wet metric tons or 1,845 dry metric tons, 10 percent more or less. [34] On the other hand, Certified Adjusters, Inc., to which Switzerland Insurance had referred petitioner's claim, prepared a report which showed that a total of 2,451.630 wet metric tons of copper concentrates were delivered at Poro Point. [35] As the report stated:

It is to be pointed out that there were no actual weighing made at Benguet Exploration, Inc.'s site. The procedure done was that after weighing the trucks before and after unloading at Philex Poro Point Installation, the weight of the load was determined and entered on "Philex" Trip Ticket which was later on copied and entered by the truck driver on Benguet Exploration, Inc.'s Transfer Slip. [36]

Considering the discrepancies in the various documents showing the actual amount of copper concentrates transported to Poro Point and loaded in the vessel, there is no evidence of the exact amount of copper concentrates shipped. Thus, whatever presumption of regularity in the transactions might have risen from the genuineness and due execution of the Bill of Lading, Certificate of Weight, Certificate of Loading, and Mate's Receipt was successfully rebutted by the evidence presented by respondent Switzerland Insurance which showed disparities in the actual weight of the cargo transported to Poro Point and loaded on the vessel. This fact is compounded by the admissions made by Lumibao and Cayabyab that they had no personal knowledge of the actual amount of copper concentrates loaded on the vessel. Correctly did the Court of Appeals rule:

In the face of these admissions, appellant's claim of loss or shortage is placed in serious doubt, there being no other way of verifying the accuracy of the figures indicated in appellant's documentary evidence that could confirm the alleged loss of 355.736 MT. Notwithstanding the figure stated in Bill of Lading No. PP/0-1 (Exhibit A) that 2,243.496 WMT of copper concentrates was loaded by appellant at the port of origin, it should be stressed that this is merely prima facie evidence of the receipt by the carrier of said cargo as described in the bill of lading. Thus, it has been held that recitals in the bill of lading as to the goods shipped raise only a rebuttable presumption that such goods were delivered for shipment and as between the consignor and a receiving carrier, the fact must outweigh the recital (*Saludo vs. Court of Appeals*, 207 SCRA 498, 509 [1992]). Resultingly, the admissions elicited from appellant's witnesses that they could not confirm the accuracy of the figures indicated in their documentary evidence with regard to the actual weight of the cargo loaded at the port of origin and that unloaded at the port of destination, in effect rebuts the presumption in favor of the figure indicated in the bill of lading. [37]

WHEREFORE, the decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

[1] Composed of Justice Ricardo J. Francisco, ponente, and Justices Ramon A. Barcelona and Hector L. Hofileña concurring.

[2] Records (Civil Case No. 12394), p. 1.

[3] Records (Civil Case No. 13085), p. 1.

[4] Id., p. 58.

[5] TSN, pp. 3-51, Jan. 22, 1988.

[6] Id., pp. 54-72.

[7] According to the draft report (Exh. B), the acronym OMIC stands for Overseas Merchandise Inspection Co., Ltd.

[8] TSN, pp. 73-100, Jan. 22, 1988.

[9] TSN, pp 4-16, Sept. 13, 1988.

[10] Exh. E-4; Records (Civil Case No. 13085), p. 190.

[11] TSN, pp. 17-18, Sept. 13, 1988.

[12] Id., pp. 21-74.

[13] TSN, pp. 3-5, May 15, 1989.

[14] TSN, pp. 3-17, May 22, 1989.

[15] Id., pp. 19-35.

[16] TSN, pp. 9-24, 32-34, July 10, 1989.

[17] TSN, pp. 10-41, July 25, 1989.

[18] TSN, pp. 6-33, July 31, 1989.

[19] CA Decision, p. 7; Rollo, p. 33.

[20] Rollo, p. 36.

[21] Id., pp. 14-15.

[22] Concepcion v. Court of Appeals, G.R. No. 120706, Jan. 31, 2000.

[23] Rizal Surety & Insurance, Co. v. Court of Appeals, G.R. No. 112360, July 18, 2000.

[24] TSN, pp. 62-63, 70, 75-80, Jan. 22, 1988.

[25] Id., pp. 75-82.

[26] TSN, pp. 5-11, Sept. 13, 1988.

[27] Id., pp. 72-74.

[28] PNOC Shipping and Transport Corp. v. Court of Appeals, 297 SCRA 421 (1998). See also *Restaurante Las Conchas v. Llego*, 314 SCRA 24 (1999); *Philippine Home Assurance Corp. v. Court of Appeals*, 257 SCRA 468 (1996); *Eugenio v. Court of Appeals*, 239 SCRA 207 (1994).

[29] *Hibberd v. Rohde*, 32 Phil. 476, 478 (1917).

[30] *Bough v. Cantiveros*, 40 Phil. 209, 213 (1919).

[31] *Hibberd v. Rohde*, supra at 480.

[32] Records (Civil Case No. 13085), p. 242.

[33] TSN, p. 74, Jan. 22, 1988.

[34] Records (Civil Case No. 13085), p. 242.

[35] Exh. 12; Report, dated Jan. 16, 1986, p. 1; Records (Civil Case No. 13085) p. 243.

[36] Id., p. 4; Id., p. 246.

[37] CA Decision, p. 7; Rollo, p. 33.

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