

**THE UNION GUARANTEE CO., LTD., PLAINTIFF AND APPELLEE, VS.
AW YONG CHIOW SOO & TEE (TENG) KIM KUY AND JING KEE
& CO., COPARTNERSHIPS, AND TENG’ KIM TONG,
DEFENDANTS. JING KEE & ...**

G. R. No. 17322. January 12, 1922

Ponente: JOHNS, J.

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JOHNS, J.:

The plaintiff is a corporation organized and existing under the laws of the Philippine Islands, with its principal office in the city of Manila, and is engaged in the business of surety and indemnity bonds. The defendant Aw Yong Chiow Soo & Tee (Teng) Kim Kuy is a copartnership composed of the defendants Aw Yong Chiow Soo & Tee (Teng) Kim Kuy, doing business under the Chinese name of Koon Kee, and is duly registered in the Philippine Islands.

The defendant Koon Kee & Co. is a copartnership registered under the laws of the Islands, composed of the defendants Aw Yong Chiow Soo, Tee (Teng) Kim Kuy and Teng Kim Tong, with its place of business in Manila, and, as such, has succeeded to all of the assets and assumed all the liabilities of the firm Aw Yong Chiow Soo & Tee (Teng) Kim Kuy. The defendant Jing Kee & Co. is a partnership organized under the laws of Japan, and doing business there and in Manila, and is composed of Teng Kim Kuy, of Kobe, Japan, and Teng Kim Tong, of Manila.

The defendants Aw Yong Chiow Soo and Teng Kim Tong are residents of Manila, and the defendant Teng Kim Kuy is a resident of Japan.

For cause of action, plaintiff alleges that at the special instance and request of defendants, it executed certain bonds to the Bureau of Customs in Manila, which were required for the delivery to the defendants of goods, wares, and merchandise consigned to them from foreign ports, and that it also guaranteed the payment of wharfage, arrastre and storage charges on account of the imports.

That the defendant Aw Yong Chiow Soo is the authorized agent of all the defendants in the city of Manila, and that, acting for, and representing, all of them, he made written applications to the plaintiff at various times for the issuance of such bonds on behalf of all the defendants, a copy of one of which is attached to the complaint, marked Exhibit A, and made a part thereof. That the gross amount for which the bonds were executed was P70,000 in Philippine currency, and that all the bills of lading were in the Philippine Islands at the time the bonds were executed. That the total amount of the bonds in favor of the Bureau of Customs executed for the defendants, guaranteeing advanced charges, was P4,500.

That, although the bills of lading were and now are within the Philippine Islands and in the hands of the bank, the defendants have not secured the bank or paid any of the charges, and have violated the terms and provisions of the bonds and guaranties. That the bank has presented bills of lading to the customs authorities and demanded

delivery of the merchandise, and made a demand upon the plaintiff, in writing, for the payment of the amount of such bonds and charges. That, in accord with the terms and provisions of the bonds, this plaintiff made a demand upon the defendants for the payment of P74,500, no part of which has been paid, and all of which is now due and owing from the defendants to the plaintiff, on account of such bonds and charges.

That the defendants committed fraud and deceit upon the plaintiff in obtaining the execution of the bonds. That the goods evidenced by the bills of lading were not in the Philippine Islands, and in truth and in fact, as the defendants well knew, such bills of lading were in the Islands.

The defendants Jing Kee & Co., Teng Kim Kuy and Teng Kim Tong filed a demurrer to the amended complaint. The remaining defendants appeared by their respective attorneys Fisher and DeWitt, and, in legal effect, consented to, and authorized, a judgment against them for the amount of plaintiff's claim, less some minor charges.

In this condition of the record, the case was submitted October 30, 1920, and on November 1, 1920, the court rendered judgment against the defendants Aw Yong Chiow Soo & Tee (Teng) Kim Kuy, Koon Kee & Co., and Aw Yong Chiow Soo for P74,500, with interest thereon at the rate of 4 per cent per annum, and overruled the demurrer of the defendants Jing Kee & Co., Teng Kim Kuy and Teng Kim Tong to the amended complaint, neither of whom was present at the time or represented by counsel. After the rendition of this judgment against those defendants, the last named defendants filed a motion for a new trial, which was overruled, and, from this ruling, they alone have appealed, claiming that the court erred in deciding the case on its merits and rendering judgment against the other defendants, while the demurrer of these defendants was still pending.

The bonds in question are joint and several, and, by their terms, there was a joint and several liability. The judgment rendered against Aw Yong Chiow Soo & Tee (Teng) Kim Kuy, Koon Kee & Co., and Aw Yong Chiow Soo was joint and several, and, in legal effect, as to them, it was a consent judgment. There is no claim or pretense that attorney DeWitt was not authorized to appear for them and consent to the judgment, which was rendered, or that there was any fraud or collusion. After its rendition, the attached property was sold, from which a substantial amount was realized and applied on the judgment. It appears that Tee (Teng) Kim Kuy was a member of the firm of Aw Yong Chiow Soo and Tee (Teng) Kim Kuy for whom attorney DeWitt appeared. The legal right of attorney DeWitt to appear for, and represent, the firm is not questioned. As a member of the firm, Teng Kim Kuy is bound by the acts of his firm within the scope of its authority. His firm, having consented to the rendition of the judgment against it, in the absence of fraud or collusion, he is bound by its acts. As a member of the firm, he has no legal right to complain against any authorized act of the firm, including which is its authority to consent to a judgment against it.

The appealing defendants have no legal right to complain, because the plaintiff took judgment against some of the defendants only. The liability, if any, being joint and several, the taking of a judgment against some of them, would not operate as a bar or release of any of the remaining defendants, who are liable on the bonds. There is no merit in the appeal.

The judgment is affirmed, with costs. So ordered.

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

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