

**ASIATIC PETROLEUM CO. (PHILIPPINE ISLANDS), LTD., PLAINTIFF
AND APPELLEE, VS. POTENCIANO DE PIO ET AL., DEFENDANTS.
GREGORIO YBAFFEZ, LEON BARILEA, AND EPIPANIO TUPAS,
APPELLANTS.**

G.R. No. 21923. September 13, 1924

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an action based on a contract and indemnity bonds instituted in the Court of First Instance of Iloilo by the Asiatic Petroleum Co., Ltd., to secure from the defendants the sum of P10,758.66. Judgment was obtained in the trial court by the plaintiff against the defendants Potenciano de Pio, Gregorio Ybanez, Felipe Murillo, Leon Barilea, and Epifanio Tupas jointly and severally, for the amount of P10,000, with legal interest beginning with December 8, 1921, and continuing until payment, and against Potenciano de Pio, Leon Barilea, and Epifanio Tupas jointly and severally, for P758.66, with similar legal interest, together with costs. Three defendants have elevated the record to this court, namely, Gregorio Ybanez by one perfected appeal, and Leon Barilea and Epifanio Tupas by another perfected appeal.

Certain facts are not in dispute and will be first mentioned. Potenciano de Pio entered into a contract of agency with the Asiatic Petroleum Co. (Philippine Islands) Ltd., on July 21, 1920, pursuant to which De Pio became the agent of the company in the municipality of Nueva Cadiz, Province of Occidental Negros, under the terms of the contract. Subsequently, De Pio violated his contract, causing a loss to the company of P10,758.66.

The company, to protect itself, had secured indemnity bonds in its favor from two sets of individuals, although, as will be explained in a moment, these bonds are somewhat indefinite in phraseology. By one contract of indemnity dated July 30, 1920, F. B. Murillo and G. Ybanez made themselves jointly and severally liable to the Asiatic Petroleum Company in the amount of P10,000. By another contract of indemnity, dated December 6, 1920, Leon Barilea and E. Tupas made themselves jointly and severally liable to the Asiatic Petroleum Company in the amount of P15,000.

Counsel for appellants Barilea and Tupas says with some reason that the plaintiff has not made out its case. He points out that the indemnity bonds in favor of the plaintiff have not been connected up with the contract of agency. It is true that the indemnity bonds, Exhibits B and C, speak of "el agente nombrado en dicho convenio," "dicho agente," and "el referido agente," without naming the agent. But we think this vague wording has been cured by three circumstances.

In the first place, all the defendants in their pleadings admitted the genuineness and due execution of the written instruments sued on. In the second place, at the trial, the attorney for the plaintiff offered in evidence Exhibits B and C with the statement that Exhibit B "es una fianza relacionada con el Exhibit A firmada por los Sres. Leon Barilea y Epifanio Tupas el dia 6 de diciembre de 1920. Y el Exhibit C es una fianza que es documento publico tambien, firmada por los demandados Gregorio Ybanez y Felipe Murillo el dia 30 de julio de 1920;" and these

documents were admitted "sin objecion" on the part of counsel for the defendants. And in the third place, the defense placed on the stand Epifanio Tupas, one of the defendants, and on direct examination drew from him the statement that he had signed "una fianza adicional y secundaria" in favor of the Asiatic Petroleum Company, and that the principal debtor was Potenciano de Pio. The appellants obviously are estopped by their own testimony which they themselves cannot gainsay. Fortunate it is for appellee, that defects or omissions in evidence introduced by one party may be cured or supplied by evidence subsequently introduced by his adversary, or brought out on cross-examination. (38 Cyc, 1432; 5 Wigmore on Evidence, sec. 2495; Van Cott vs. North Jersey Street Railway Co. [1905], 72 N. J. L., 229.)

It only remains to determine the precise liability of each of the appellants. Potenciano de Pio, the principal, who did not appeal, is of course primarily liable as found by the trial judge, in the amount of P10,758.66, and Felipe Murillo who likewise took no appeal is liable along with other defendants in the sum of P10,000, as found by the trial judge.

As to the appellant Ybanez, his position is similar to that of Murillo. Ybanez' liability is fixed by Exhibit B in the amount of F10,000. His argument that Exhibit C was intended to substitute Exhibit B, and that at any rate he would only be liable for the amount of the debt of De Pio existent on December 6, 1920, or P2,571.80, is not borne out either by the wording of Exhibits B or C, or by any oral testimony.

With reference to appellants Barilea and Tupas, it is to be noted that they signed Exhibit C on December 6, 1920, obligating themselves thereby in the amount of P15,000. The plaintiff alleged in its complaint that this was another additional bond in its favor, while one of the defendants testified without objection or contradiction that the document was signed with the understanding that it was additional and secondary to the first bond. In this connection, it was admitted by the attorney for the plaintiff in a memorandum filed with the trial judge, that Barilea and Tupas were responsible to the plaintiff only for indebtedness incurred by Potenciano de Pio after December 6, 1920, when the bond was executed, that is, for P8,187.58. In other words, the point made by appellants and which at one time was acquiesced in by the appellee, is that the bond could have no retroactive effect, unless a contrary intention was manifest. Here, it may be said, that the contract shows no such intention.

Indemnity is of course in the nature of a written contract for a certain amount on certain specified conditions. The general rules which govern the requisites and the validity of contracts apply to contracts of indemnity. The contract will be strictly construed for the purpose of confining the amount to the precise terms. Where the contract expressly limits the amount of the indemnitor's liability, the indemnitee may recover only up to, but not exceeding, the amount specified. The contract of indemnity will be construed as covering only losses or liabilities which are incurred after the execution of the contract, unless the contract shows an intention not to be limited to future losses or liabilities. (31 C. J., pp. 419 et seq.; Standard Oil Co. of New York vs. Vasquez and Antigua, R. G. No. 15728[1]; Veloso vs. Ayllon, R. G. No. 21990[2].)

Judgment is affirmed in so far as it relates to the defendants Potenciano de Pio, Gregorio Ybanez, and Felipe Murillo, and is modified in so far as it relates to Leon Barilea and Epifanio Tupas, it being understood as to the last two named defendants that their liability is limited to P8,187.58, and is additional and secondary to that of the other defendants. Without special finding as to costs in this instance, it is so ordered.

Johnson, Street, Avancena, Villamor, Ostrand, and Romualdez, JJ., concur.

Judgment affirmed in part and modified in part.

[1] Promulgated October 1, 1920, not reported.

[2] Promulgated September 12, 1924, not reported.

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