

**THE AMERICAN EXPRESS CO., INC., PLAINTIFF AND APPELLEE, VS.
VICENTE ALDANESE, INSULAR COLLECTOR OF CUSTOMS,
DEFENDANT AND APPELLANT.**

G.R. No. 22790. January 19, 1925

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

This is an action brought by the plaintiff company against the defendant for the recovery of 91 bales of paper, or its value amounting to P8,560.56, with interest thereon at the legal rate from the date of the complaint, with the costs.

The defendant alleges that he cannot deliver said goods, nor is he liable therefor, because said 91 bales of paper are subject to forfeiture under the provisions of subsection (m), section 1363 of the Administrative Code; wherefore he prays that the complaint be dismissed with costs.

The Court of First Instance of Manila, after trial and submission of the case, rendered judgment as prayed for in the complaint.

The defendant took this appeal from said judgment and in his brief assigns the following errors:

- "1. The finding that the 'Cooperative Agricola de Filipinas' is not the consignee of the merchandise described in the complaint
- "2. The admission of additional evidence without the consent of the defendant.
- "3. The holding that said merchandise is not subject to forfeiture.
- "4. The holding that the defendant is liable to the plain tiff for the payment of P8,560.56, with legal interest thereon."

The first assignment of error is based on that paragraph of the stipulation of facts which says that the "Cooperativa Agricola de Filipinas" is "the consignee thereof as per manifest of the importing vessel."

But it is not the contents of the manifest of the carrier, but the bill of lading, that determines who the consignee is, and the bill of lading, copy of which, Exhibit A, is attached to the complaint, was issued to the order of the shipper or his assigns, and it does not appear in any manner whatsoever, that the "Cooperativa Agricola de Filipinas" is the shipper or the assignee of said bill of lading. What appears admitted in the stipulation of facts (par. 4) is that the shipper of the merchandise in question transferred the bill of lading to the Bank of Taiwan, Ltd., of Osaka, Japan, and this bank in turn transferred it to the herein plaintiff for value.

As to the second error assigned, we do not find it of any merit, for it does not appear from the record that the trial court has committed an abuse of discretion in permitting the introduction of additional evidence, even though it amended the stipulation of facts submitted by the parties. That is no abuse of discretion where, as in the instant

case, such amendment of the stipulation was for the purpose of bringing to the knowledge of the court all the facts pertinent to, and necessary for, the better solution of the principal questions involved in the case. Moreover, the nondelivery of the merchandise to the assignee in insolvency of the "Cooperativa Agricola de Filipinas," an important point in the case, appears in a letter sent by E. E. Elser to the defendant, set out in the motion of the Attorney-General in the case of E. E. Elser vs. Asia Banking Corporation, which motion was filed June 27, 1923, some months after the original stipulation.

In support of the third assignment of error, the appellant insists that the merchandise in question is subject to seizure because while it was pledged by the "Cooperativa Agricola" yet the pledge is void. We are not concerned here with the determination of the question whether such pledge was void or not. The fact is that it was held valid in a final judgment of a competent court in favor of the Asia Banking Corporation, the possessor of the merchandise, which, in view of that judgment, cannot be deprived of the possession thereof.

If such a pledge was void, it was incumbent upon the defendant, interested in the seizure of the merchandise, to take the steps leading to the judicial declaration of its nullity, and not upon the herein plaintiff, holder in good faith and in due course of the bill of lading of said merchandise, innocent of the fraud alleged to have been committed by the "Cooperativa Agricola de Filipinas," and fully protected by the law in its rights.

As the "Cooperativa Agricola de Filipinas" on whose fraud the seizure was based, had no longer the possession of the merchandise, which possession was held by the Asia Banking Corporation by virtue of a pledge judicially declared valid, so it results that such merchandise was neither under the custody of the customs authorities, nor in the hands of the person who made the illegal importation or had knowledge thereof. Such a conclusion would be repugnant to the judgment in its favor declaring the pledge valid.

Therefore, under these facts, the merchandise in question cannot be held subject to seizure, under the provisions of paragraph (m), subsection 3, section 1363 of the Administrative Code, in connection with sections 1364, 1267 and 1269 of said Code.

The fourth and last error assigned is a consequence of the preceding ones which we find to be of no merit, and cannot, therefore, be held committed by the trial court.

The right of the plaintiff, as holder in due course of the bill of lading of the merchandise in question being clear, to demand of the defendant the delivery thereof or the payment of its value, which right is recognized and confirmed by the trial court, and is not barred by any valid and legal consideration whatsoever, the judgment appealed from is affirmed without costs. So ordered.

Johnson, Street, Malcolm, Villamor, Ostrand, and Johns, JJ., concur.

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