

**BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS.
ULRICH FOERSTER, AS ADMINISTRATOR OF THE INTESTATE OF THE
DECEASED FRANCISCO ECHEVARRIA, DEFENDANT AND APPELLEE.**

G. R. No. 25811. December 31, 1926

Ponente: OSTRAND, J.

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OSTRAND, J.:

On January 30, 1920, the board of directors of the corporation Arroceria de Pototan authorized its treasurer, the now deceased Francisco Echevarria, to obtain for the corporation a credit on current account for the sum of P100,000 from the Bank of the Philippine Islands. The credit was granted and though no formal document to that effect was executed until March 27, 1920, it appears from the testimony of the witness Eugenio Rocha, then cashier of the Iloilo branch of the bank that the defendant corporation began to draw against the credit as early as February 9, 1920. The document of March 27, 1920, reads as follows:

"Bank of the Philippine Islands "agreement for credit in current account "This Agreement, made this 27th day of March of 1920, between Mr. Francisco "Echevarria, as Director-Treasurer of the Arroceria de Pototai of Iloilo, Philippine Islands, of the first part and the Bank of the Philippine Islands, of Iloilo, Philippine Islands, of the second part.

"WITNESSETH

"That whereas the party of the second part agrees to grant and hereby does grant to the party of the first part a loan by way of a credit in current account of not to exceed the sum of one hundred thousand pesos (P100,000) which said sum, or so much as may be desired by said first party, is to be advanced to the said first party upon his/its checks drawn upon the said second party.

"Now, therefore, said first party for self hereby agrees to pay, to said second party, interest upon all sums so taken, computed upon average daily balances and payable upon the last day of each quarter of the calendar year, at the rate of eight percent per annum.

"Said first party further agrees to furnish security for said loan by pledge or mortgage of real estate or chattels or assignments of securities, as may be desired by said second party, to an amount sufficient at all times amply to secure said second party for the principal and interest of said loan, and in case said first party fails to furnish the amount of security or additional security deemed necessary and demanded by said second party, said second party may declare the whole principal and interest immediately due and payable, anything in these presents to the contrary notwithstanding.

"It is hereby further agreed that the principal and interest of said loan shall in any event be and become due and payable on sixty days from demand.

"For the Arroceria DE POTOTAN

(Sgd.) "Francisco Echevarria

"Director-Treasurer

"THE BANK OF THE PHILIPPINE ISLANDS

"By (Sgd.) "Illegible

"Witnesses:

(Sgd.) "Illegible

"Miguel Gargollo"

Simultaneously with the execution of the document quoted, Echevarria gave the following bond:

"BANK OF THE PHILIPPINE ISLANDS

"BOND

"Know all men by these presents, that we Mr.. Francisco Echevarria, Director-Treasurer of the Arroceria de Pototan in the name of the latter as well as in his own name as surety are hereby held and bound unto the Bank of the Philippine Islands, of Iloilo, Philippine Islands, in the sum of one hundred thousand pesos (P100,000), Philippine currency, for the payment of which, well and truly to be made, we hereby jointly and severally, bind ourselves, our heirs, executors, administrators and assigns, firmly by these presents.

"The conditions of this obligation are such, that;

"Whereas, the said Bank of the Philippine Islands has advanced to the said Arroceria de Pototan by way of a credit on current account the sum of one hundred thousand pesos (P100,000).

"Now, therefore, if the said Arroceria de Pototan shall duly pay, or cause to be paid, to the said Bank of the Philippine Islands, on demand, at sixty days from demand, the said sum of one hundred thousand pesos (P100,000), and shall duly pay, or cause to be paid, quarterly, on the last days of March, June, September, and December of each year, until the principal and interest are paid in full, interest on said sum and on all sums from time to time remaining unpaid at the rate of eight per cent (8%) per annum, then this obligation shall be void, otherwise it shall remain in full force and effect.

"In witness whereof, we have hereunto set our hands at Iloilo, Philippine Islands, this 27th day of March of 1920.

"For the ARROCERA DE POTOTAN

(Sgd.) "FRANCISCO ECHEVARRIA

"Director-Treasurer

"FRANCISCO ECHEVARRIA

"Surety

"Witnesses:

(Sgd.) "Illegible

"Illegible"

The Arroceria de Pototan continued to draw against its credit with the plaintiff Bank until December 8, 1921, when its overdraft amounted to P77,944.40, of which amount the plaintiff then demanded payment within sixty days. The Arroceria was able to pay only Pi,000 and on the 30th of November, 1923, the amount due with interest up to September 30, 1923, reached the sum of P84,922.98. The plaintiff thereupon brought an action against the Corporation as a result of which it was able on January 26, 1925, to collect the sum of P43,100, leaving a balance

of P45,751.37 due and unpaid. In the meantime and while the action against the Arroceras de Pototan was pending, the plaintiff by virtue of the bonds above quoted presented a claim to the committee of claims against the estate of the then deceased Francisco Echevarria for the full amount of the debt of the Arroceras de Pototan to the bank. The committee allowed the claim and the administrator of the estate appealed to the Court of First Instance, which on January 30, 1926, rendered a decision in which it was held that the bond given on March 27, 1920, had no retroactive effect and did not cover the amounts received from the Bank prior to the date of the instrument; that the amount received subsequent to that date was only P25,429.15; that the money collected by the aforesaid action against the Arroceras de Pototan should first be applied to the payment of the debt incurred subsequent to March 27, 1920, and that by so applying the money collected the amount due upon the bond was more than covered. The court therefore dismissed the case and thereupon the present appeal was taken by the plaintiff.

In our opinion, the appealed judgment is erroneous. It is very true that bonds or other contracts of suretyship are ordinarily not to be construed as retrospective, but that rule must yield to the intention of the contracting parties as revealed by the evidence, and does not interfere with the use of the ordinary tests and canons of interpretation which apply in regard to other contracts. (21 R. C. L., 977.)

In the present case the circumstances so clearly indicate that the bond given by Echevarria was intended to cover all of the indebtedness of the Arroceras upon its current account with the plaintiff Bank that we cannot possibly adopt the view of the court below in regard to the effect of the bond.

Echevarria was director-treasurer of the Arroceras corporation and was familiar with its financial affairs. The corporation had only one current credit account, a fact which was known to Echevarria, and there can be no doubt whatever that the bond was intended by all parties to cover the entire account. The Arroceras's credit on current account was limited to P100,000—not to that amount plus previous overdrafts—and Echevarria bound himself to respond for the full amount of that credit, well knowing that at the time the bond was executed a large portion of the credit secured by the bond had already been exhausted. In such circumstances, the defendant can hardly be heard to say that the bond was executed merely to cover future advances and was not intended to cover the entire credit. The situation would have been different if Echevarria at the time of the execution of the bond had been ignorant of the fact that a part of the credit had already been utilized; in that case we should have been justified in regarding the bond as merely prospective.

For the reasons stated, and it appearing that all of the assets of the Arroceras de Pototan are exhausted, the appealed judgment is reversed and it is ordered that the plaintiff have and recover judgment against the defendant for the sum of P45,751.37, with interest at the rate of 8 per cent per annum from January 26, 1925, but without costs. So ordered.

Avanceña, C. J., Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

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