

**PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS.
MARIANO ESCUETA, CIRILO B. SANTOS AND TEOFILO VILLONGCO,
DEFENDANTS AND APPELLANTS.***G. R. No. 26118. December 31, 1926*

Ponente: OSTRAND, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-26118/>**OSTRAND, J.:**

In its complaint the plaintiff alleges "that on February 14, 1919, and to secure the payment of any obligation the Island Trading Co., a corporation duly organized under the laws of the Philippine Islands, might contract with the Philippine National Bank, the plaintiff, Mariano Escueta, Cirilio B. Santos, Teofilo Villongco, the defendants and Wm. Kennedy and Rafael Villanueva, signed jointly and severally, a surety agreement in favor of said bank, copy of which is hereto attached and made a part hereof as Exhibit A. Wm. Kennedy is now dead and Rafael Villanueva withdrew from said agreement on April 6, 1920 and for these reasons they are not made parties defendants in the complaint. That the present indebtedness of the principal, the Island Trading Co., to the plaintiff, the Philippine National Bank and for which the above surety agreement was executed, amounts to P26,736.10, with interest at the rate of 6 1/2 per cent per annum from January 1, 1924," all of which is due and unpaid.

The plaintiff therefore asks judgment against the defendants, jointly and severally, for said sum and interest with costs. The surety agreement referred to in the complaint and made a part thereof reads as follows: "This surety agreement, executed at the City of Manila, P. I., on this 14th day of February, 1919, by Mariano Escueta, Rafael Villanueva, Cirilo B. Santos, Wm. Kennedy and Teofilo Villongco, all of lawful age and residents of the City of Manila, P. I., herein referred to as the Guarantors, and the Philippine National Bank, herein referred to as the Creditor, bears witness that:

"Whereas, the Island Trading Co., Inc., of Manila, P. I., herein referred to as the Principal, desires to obtain credits, loans, overdrafts, discounts, etc., from the Creditor, for all of which the Creditor requires security; and the Guarantors, on account of valuable consideration received from the Principal, are desirous of assisting the Principal in obtaining such credits, etc., and of becoming such security;

"Now, therefore, for the purpose above-mentioned, the Guarantors, jointly and severally, hereby guarantee and warrant to the Creditor, its successors or assigns, the prompt payment at maturity of all the notes, drafts, bills of exchange, overdrafts and other obligations of every kind, on which the Principal may now be indebted, or may hereafter become indebted to the Creditor, plus the interest thereon at the rate of six and one-half (6 1/2) per cent per annum, and the costs and expenses of the Creditor incurred in connection therewith.

"In case of default by the Principal in the payment at maturity of any of the obligations above mentioned, or in case of the Principal's failure promptly to respond to any other lawful demand made by the Creditor, the Guarantors, jointly and severally, agree to pay to the Creditor, its successors or assigns, upon demand, all outstanding obligations of the Principal whether due or not due, and whether held by the Creditor as principal or agent; and it is agreed that a certified statement by the Creditor as to the amount due from the Principal shall be accepted as correct by the Guarantors without question, and may be admitted by any court as conclusive

evidence.

"The Guarantors expressly waive all rights to demand of payment and notice of nonpayment and protest, and agree that the securities of every kind, that are now and may hereafter be left with the Creditor, its successors, indorsees or assigns, as collateral to any evidences of debt or obligations, or upon which a lien may exist therefor, may be withdrawn or surrendered at any time, and the time of payment thereof extended, without notice to, or consent by the guarantors, and that the liability on this guaranty shall be direct and immediate and not contingent upon the pursuit by the Creditor, its successors, indorsees or assigns, of whatever remedies it or they have against the Principal or the securities or lien it or they may possess, and the guarantors will at any time on demand, whether due or not due, pay to the Creditor any overdraft of the Principal.

"This instrument is intended to be a complete and perfect indemnity to the Creditor for any indebtedness or liability of any kind owing by the Principal to the Creditor from time to time, and to be valid and cotinuous without further notice to the Guarantors, and may be revoked by the Guarantors at any time, but only after forty-eight hours' notice in writing to the Creditor, and such revocation shall not operate to relieve the Guarantors from the responsibility for obligations incurred by the Principal prior to the termination of such period.

(Sgd.)

"MARIANO ESCUETA

"RAFAEL VILLANUEVA

"CIRILO B. SANTOS

"WM. KENNEDY

"TEOFILO VILLONGCO

"Guarantors"

In their answer, the defendants make a general denial of the allegations of the complaint and, in substance, set up as special defenses that the aforesaid surety agreement was never accepted by the plaintiff; that the plaintiff had unduly and without the consent of the defendants, extended the time for the payment of the debt by the principal, the Island Trading Co., Inc., and thereby relieved the defendants from their liabilities as sureties; that the plaintiff without the knowledge and consent of the defendants released the surety, Rafael Villanueva, from his obligations under the agreement, and that the plaintiff should have presented its claim against the estate of the surety, Wm. Kennedy, deceased, but have failed to do so and that, consequently, the defendants cannot be held liable for the shares of these two sureties.

Upon trial, the court below found that the defendants were liable for the sum of P26,736.10, less one-fifth, said one-fifth representing the liability of the deceased surety, Wm. Kennedy, but should be credited with the sum of P17,076.68, the value of certain merchandise sent by the Island Trading Co., Inc., through the plaintiff to Shanghai, China, to be there disposed of by the Shanghai branch of the plaintiff corporation and of which transaction no account had been rendered by the plaintiff. Judgment was therefore rendered in favor of the plaintiff and against the defendants for the sum of PP7,737.54, with legal interest from April 5, 1924, and without costs. From this judgment both the plaintiff and the defendants appealed.

Under its first assignment of error, the plaintiff-appellant argues that the court below erred "in finding that from the sum of P26.736.10 prayed for by the plaintiff-appellant in its complaint, there should be deducted the amount of P17,076.68 supposed value of certain goods which are alleged to have been sent by the Island Trading Co., Inc., to the Pongee & Produce Co., Shanghai, thru the branch office of the plaintiff-appellant in Shanghai."

The only evidence as to the transaction referred to in this assignment of error is the testimony of the defendant Escueta in which the following questions and answers are found:

"Q, Aside from all that, do you know if some goods out-side of the Philippines and in foreign countries were sold by the bank, which goods were also the property of, the Island Trading Co., Inc., and of which the bank had also taken possession?—A. Yes sir.

"Q. What are those goods ?—A. In May, 1921, the Island Trading Co., Inc., thought of sending certain goods to Shanghai, to a firm the Pongee & Produce Co. to be sold in the amount of P17,076.68 as per invoice copy of which * * *

"Mr. Orense: Copy of which we ask should be marked Exhibit 8.

"(Witness continuing.) When these goods were already packed up came Mr. Wilson, son, who was also working in the National Bank. As it was his custom to go often to our office to transact business with the manager, when he saw the box containing the said goods, furious he said to the manager: Why do you send those goods to Shanghai without the consent of the bank? Then Goldenberg, in my presence, said: I had your permission.—Alright, but you must send those goods to Shanghai thru the bank and that the firm Pongee &

Produce Co. cannot sell said goods without the authority of the Manager of the Bank's Branch in Shanghai.

"Q. Were those sent to Shanghai thru the bank?—A. Yes sir.

"Q. And after said goods were sent to Shanghai, do you know if they were sold there and who sold them?— A. Up to the year 1923, said goods were not sold and afterwards ultimately the bank has ignored it completely and we do not know what has been done by the Bank with those goods.

"Q. What was the value of those goods at the time they were sent to Shanghai thru the bank?—A. It appears in this invoice, P17,076.68.

' "Q. That amount or the proceeds of those goods if they were sold in Shanghai by the branch of the bank, do you know if they were credited to the account of the Island Trading Co., Inc., with the Philippine National Bank?— A. I think, not, because it seems now that nobody in the bank knows about these goods which were sent to Shanghai."

In the opinion of the writer, the testimony quoted is hardly sufficient to charge the plaintiff with the responsibility for the disposal of the merchandise alleged to have been shipped to Shanghai. The Island Trading Co. was a commercial organization and presumably kept records of its transactions, but there seems to be no document or book entry showing that the goods were shipped to Shanghai through the plaintiff bank or any of its branches. If the shipping documents were transmitted or delivered to the bank, there should have been a letter of transmittal,

of which the Island Trading Co. must have retained a copy, but no such letter or copy has been offered in evidence; the invoice referred to in the testimony is, if anything, in favor of the plaintiff inasmuch as it may be construed to indicate that the invoiced goods were shipped to the Pongee & Produce Co., Shanghai. The majority of the members of the court are, however, of the opinion that the uncontradicted testimony of Mr. Escueta must be accepted as true and that it shows sufficiently that the bank assumed control over the merchandise, that it was its duty to account therefor, and that having failed to do so, it must be charged with the value of the goods.

The plaintiff-appellant's second assignment of error is to the effect that the court below erred in finding that the surety, Rafael Villanueva, had been released from responsibility by the plaintiff-appellant and in deducting, for that reason, one-fifth from the amount due the plaintiff.

This assignment, is, we think, well taken. There is absolutely no evidence in the record showing that the plaintiff gave its consent to Villanueva's withdrawal from the surety agreement, or that it released him from responsibility. The fact that he was not made a defendant in this action is not sufficient to show such consent or release; the sureties were jointly and severally bound and the action might be brought against either of them without joining the cosureties. It is further to be noted that the defendants made no motion in the court below to have Villanueva included as a party defendant. The defendants-appellants present seven assignments of error, none of which can be sustained. Under the first three and the fifth, it is argued that it has not been shown that the plaintiff accepted the surety agreement. This is a question of fact, which in our opinion was correctly determined by the trial court. The document evidencing the agreement was delivered to the plaintiff bank and retained by it without objection. It also appears that the bank, on the strength of the agreement, extended credit to the Island Trading Co. These facts sufficiently indicate the acceptances. Such acceptances need not necessarily be express or in writing.

The fourth assignment of error has reference to the fact that the plaintiff, in its transactions with the Island Trading Co., charged a higher rate of interest than that fixed in the surety agreement and the defendants argue that one of the principal conditions of the agreement was thereby violated and altered by the plaintiff and the sureties consequently released. This contention cannot successfully be maintained. Whatever interest the plaintiff may have charged the Island Trading Co. in its accounts, the fact remains that as against the sureties, it is demanding

only the rate of interest specified in the agreement, which still remains unchanged and in force.

The defendants-appellants' other assignments of error are so clearly untenable as to require no discussion.

For the reasons stated, the appealed judgment is hereby modified by increasing the plaintiff's recovery to the full sum of P9,659.42, with interest at the rate of 6 1/2 per cent per annum from April 3, 1924. In all other respects, the judgment is affirmed without costs. So ordered.

Avanceña, C. J., Street, Malcolm, Johns, Romttaldez, and Villa-Real, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.