

THE GOVERNMENT OP THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. ALEJANDRO AMECHAZURRA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3762. March 27, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

On the 30th of June, 1903, the defendant, Alejandro Amechazurra, obtained a license to have in his possession the following firearms: One Winchester rifle, one Remington rifle, one Springfield rifle, and one Herstal revolver. On the same day he, with the other two defendants, gave a bond in the sum of \$800,\$200 for each firearm, which bond contained the following condition: "It is agreed that he shall safely keep the arms and each of them, and shall deliver them to the Government of the Philippine Islands on demand."

The defendant Amechazurra lived upon an estate situated in the pueblo of Ma-ao, in the municipality of Bago, in the Province of Occidental Negros, On the 14th day of March, 1004, his house was attacked by a band of robbers known as babaylanes, more than eighty in number. His brother-in-law was killed and. three of the arms, the Springfield, the Winchester, and the pistol were carried away by the robbers.

A demand having been made by the Government upon Amechazurra that he produce the four arms, he delivered one of them but was unable to deliver the other three for the reason above stated. Thereupon the Government commenced this action against him and his sureties upon the bond to recover the sum of \$600, or P1,200, for his failure to deliver the three arms so lost. Judgment was entered in the court below in favor of the Government for P1,200 and defendants have appealed.

The license was issued and the bond given in accordance with the provisions of Act No. 610, section 4 ["24"] and Executive Order No. 9, dated March 25, 1903. It is apparent that the appellants have not complied with the terms of the bond. They say that their failure to so comply was due to fuerza mayor. Article 1105 of the Civil Code is as follows:

"No one shall be liable for events which could not be foreseen, or which having been foreseen were inevitable, with the exception of the cases expressly mentioned in the law or those in which the obligation so declares."

It will be seen that this article is not applicable to a case where the contract expressly imposes an obligation, even in case of a loss by fuerza mayor, and the contract in question in this case does impose such an obligation, as we construe it.

This question is, in fact, no longer an open one in this court The case of The Government of the Philippine Islands vs. Punzalan (7 Phil. Rep., 546) is upon its facts, almost identical with the case at bar. It was there claimed that the rifles having been captured by a band of robbers, the defendants were relieved from responsibility upon the bond which they had given for their return. But the court said:

"They do not deny that they have failed to comply with these conditions, and they are therefore bound by the

terms of their contract in accordance with article 1255 of the Civil Code."

It may be said that this is a harsh rule when applied to a case like the present, but it must be remembered that no private person is bound to keep arms. Whether he does or not is entirely optional with himself, but if, for his own convenience or pleasure, he desires to possess arms, he must do so upon such terms as the Government sees fit to impose, for the right to keep and bear arms is not secured to him by law. The Government can impose upon him such terms as it pleases. If he is not satisfied with the terms imposed, he should decline to accept them, but, if for the purpose of securing possession of the arms he does agree to such conditions, he must fulfill them. The reasons which induced the Government to impose the terms which it did are well known.

The evidence in the case satisfies us that two of the firearms were afterwards recaptured by the Constabulary, one of them, the revolver, on the 28th or 29th of April, 1904, and the other, the Winchester, on the 2d of November, 1905, and the question is, Whether, these two arms being now in the hands of the Government, the defendants are relieved from liability therefor? This question too has been already decided in the Punzalan case above referred to. It was there held that five of the twenty guns, for which the bond was given, having been recaptured, the recovery should be reduced from \$2,000 to \$1,500. We think that case is decisive of this one upon this point. It is said, however, that there is a distinction between the two cases in, one respect. In that case it is said, "that after the robbery had occurred, some at least of the defendants exercised considerable diligence in an effort to recover the arms which had been stolen, and that, due in part to their efforts and in part to the efforts of the Constabulary and other agents of the Government, five of these rifles had been recaptured prior to the institution of this action;" while in the present case there is no evidence to show that the defendants assisted in the recapture. In the Punzalan case there were seventeen defendants. If the reduction were based upon the ground that some of the defendants had assisted in securing the return of the rifles, the judgment should have been modified only as to those of the seventeen who assisted in such return. The reduction in that case was based upon the provisions of article 1154 of the Civil Code, which is as follows:

"The judge shall equitably mitigate the penalty if the principal obligation should have been partly or irregularly fulfilled by the debtor."

It is said in that case (p. 546) :

"There is evidence of record tending to show that there was more or less negligence in the performance of their duties as municipal officials on the part of some, if not all, of the defendants, which may have contributed to the loss of these arms."

Notwithstanding this evidence, the court, in accordance with the provisions of said article 1154, reduced the amount of the recovery. We think the facts in this case are fully as strong in favor of the defendants upon this point as they were in the Punzalan case.

The Attorney-General suggests in his brief that we can not review the evidence because it is not stated in the bill of exceptions that the evidence is made a part thereof, citing the case of *Garcia vs. Hipolito* (2 Phil. Rep., 732). From the certificates of the clerk and the stenographer which appear in the record, it is apparent that we have before us all of the evidence which was presented in the court below at the trial. Failure so to state in the bill of exceptions was an error which, in accordance with the same decision cited by the Attorney-General, we are bound to correct by amendment.

The judgment of the court below is modified by reducing the recovery from P1,200 to P400. In all other respects it is affirmed. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, and Johnson, JJ., concur.

CARSON and TRACEY, JJ., dissenting:

We are of the opinion that the judgment should be affirmed, without modification.

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