

UY ALOC ET AL., PLAINTIFFS AND APPELLANTS, VS. CHO JAN LING ET AL., DEFENDANTS. SIMEON BLAS, DEFENDANT AND APPELLEE.

G.R. No. 8785. March 30, 1914

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from an order sustaining a motion to quash an execution sued out by the plaintiffs against Simeon Bias, a surety upon one of the appeal bonds furnished by the defendants and appellants in the course of a former appeal from a judgment entered in this cause. The motion is based upon the ground that execution was issued for an amount in excess of that for which the surety is liable upon his bond.

It appears that on November 28, 1906, plaintiffs instituted this action and that on November 30, 1908, the Court of First Instance of Manila rendered a decree ordering substantially :

1. That the real property involved in the action be transferred by Cho Jan Ling to the persons therein found to be the owners.
2. That Cho Jan Ling render unto his co-owners account of his administration of the property from May, 1905, until the appointment of a receiver in this action.
3. That Cho Jan Ling pay over the sum of P24,155.95 in his possession as rents prior to May, 1905.
4. That the receiver render his final accounts.

The decree terminates with the words: "And when said final account shall have been rendered the, court will make the necessary orders (resolvera lo que proceda) in accordance with the determinations of this decree."

From this decree an appeal was prosecuted to the Supreme Court of the Philippine Islands, and for the purposes of the appeal the defendants furnished bond in the following terms:

"Whereas in the above-entitled cause the plaintiffs have filed a complaint against the defendants for the recovery of certain property and of the rents accruing therefrom;

"Whereas judgment was rendered in said cause ordering the defendant Cho Jan Ling to pay the plaintiffs the sum of twenty-four thousand, one hundred fifty-five pesos and ninety-five centavos (P24,155.95) and to transfer said property to the association formed by said plaintiffs and defendants, with the exception of the Cho Chun Chac, and to pay the costs of suit, and furthermore to render accounts of his administration of said property;

"Whereas said defendant interposed an appeal from said judgment to the Supreme Court of these Islands, which was admitted by said court, upon condition that execution of said judgment might be issued unless bond, sufficient in the opinion of the court, be given to assure the fulfillment of said judgment in case the same should be affirmed, wholly or in part;

"Therefore we, Cho Jan Ling, as principal, and Dona Severina Lerma, with the assent of her spouse Don

Manuel Almeda, and Don Simeon Blas, as sureties, hereby jointly and severally obligate ourselves to pay to the plaintiffs the sum of sixty thousand pesos (P60,000) to guarantee that said defendants will comply with said judgment in case the same be wholly or partially affirmed by the Supreme Court and the costs which may be taxed by reason of the appeal interposed.

"Signed and sealed at Manila, January 18, 1909.—CHO JAN LING.—SIMEON BLAS.—S. L. DE ALMEDA.—MANUEL ALMEDA."

Upon appeal the judgment was affirmed.[1] Thereafter, in the Court of First Instance further proceedings were had in the cause, in which the defendant Cho Jan Ling was required to render, and did render, accounts of his administration of the properties in question, all in compliance with the terms of the decree of November 30, 1908, thus affirmed on appeal. At the close of these further proceedings it was found and decided that Cho Jan Ling was indebted to the plaintiffs to the amount of P18,313.34.

Plaintiffs then sued out execution against Simeon Blas, one of the sureties upon the bond of January 18, 1909, and included in their execution the full amount of the liability of Cho Jan Ling to the plaintiffs—that is to say, not only the P24,155.95, interest and costs which Simeon Blas guaranteed as surety on said bond, but also the further amount of P18,313.34 and interest which Cho Jan Ling was long subsequently condemned to pay. The motion to quash the execution as to the excess over the contractual obligation of the surety, Blas, was granted, and plaintiffs have appealed.

Upon this statement of the facts of the case we agree with the trial judge, who held as follows;

"I am of the opinion that the sureties upon the appeal bond of Cho Jan Ling, conditioned that the defendant should comply with the judgment entered if it was confirmed, can not be called upon as sureties to satisfy any judgment subsequently entered. The conditions of the bond were that he should pay a sum of money, transfer some property and render an accounting. This does not include the condition that the sureties would pay any amount which might be found due upon the accounting. The liability of the sureties is limited to that which is specifically stated in the bond, and their contract has been complied with, with the exception of the payment of the sum of P24,155.95, as stated.

" It was error to issue the execution against the sureties for the amount of the subsequent judgment."

The real question involved in this appeal is one of interpretation of the terms of the bond, which must be construed in the light of the Civil Code provision that: "Security is not presumed; it must be express and cannot be extended further than that specified therein." (Art. 1827.)

Appeal bonds are ordinarily given to secure the fulfillment of final judgments, and the measure of the surety's liability is ordinarily the amount of the final judgment rendered in the case in the course of which the appeal arose. But the appeal in this case appears to have been taken, without objection from any of the parties, from a judgment which by its very terms was not final, in that it did not dispose of all the issues raised by the pleadings. It may well be that had the plaintiff stood upon his rights, the former appeal would not have been allowed until a final judgment had been entered; or, if allowed, that an appeal bond would have been required which would have secured the payment of any amount which might be found due under the accounting. But since plaintiff went forward at that time without insisting upon his rights, and accepted without objection an appeal bond which did not in express terms or by necessary implication secure to him all that he might have demanded, he will not now be permitted to read into the bond a provision which he did not then insist upon.

Of course the liability of Cho Jan Ling was not terminated by merely rendering the accounts on which, under the terms of the original decree, judgment for P18,813.34 was there-after entered against him. But the question here is not as to the liability of Cho Jan Ling, The question before us is as to the liability assumed by the sureties on the

bond. Cho Jan Ling's liability is wholly independent of the bond, while theirs is strictly limited by its terms. Hence, while we agree with counsel for appellants, and the cases cited by him, that the duty of guardians, trustees, administrators and the like to account for the funds which come into their hands is not finally fulfilled by the mere preparation of a statement of the amount of their receipts and disbursements, so long as any funds remain in their hands, we by no means agree with him that because this duty rested upon Cho Jan Ling it necessarily rested on the sureties on his appeal bond.

The sureties on the appeal bond guaranteed merely that Cho Jan Ling would comply with the judgment requiring him "to render his final accounts;" not that he would do what he was and is morally bound to do, that is, to account for and turn over all the funds of plaintiff in his possession. The judgment, compliance with which was guaranteed by the sureties, did not in itself provide for the turning over of the balance due as a result of the accounting. For that purpose the entry of a new decree was necessary. The sureties on the appeal bond neither expressly nor impliedly undertook to guarantee compliance with any other judgment than that already entered when the instrument was executed.

The order entered in the court below should be affirmed, with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Moreland and Trent, JJ., concur.

[1] 19 Phil. Rep., 202

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