43 Phil. 852

[G. R. No. 18636. September 28, 1922]

M. TAGAWA, PLAINTIFF AND APPELLEE, VS. V. ALDANESE, INSULAR COLLECTOR OF CUSTOMS, AND THE UNION GUARANTEE COMPANY, LTD., DEFENDANTS AND APPELLANTS.

D E C I S I O N

MALCOLM, J.:

This is another of a series of cases arising out of indemnity bonds given for the delivery of merchandise without the production of bills of lading. It is, moreover, a case brought in the name of the real party in interest against the Insular Collector of Customs who delivered the merchandise without the surrender of the proper bills of lading, and the Union Guarantee Company, Ltd., which executed the indemnity bonds for the production of the bills of lading covering the shipments of merchandise. And, lastly, it is a case properly tried, with the necessary witnesses testifying, and with the necessary documents introduced in evidence.

Jap Hoo and Co. of Manila ordered of M. Tagawa and Co. of Manila, later succeeded by the Nanyo Shioji Kaisha, 2,500 crates of potatoes and 174 crates of onions. Tagawa in turn instructed his Kobe office in Japan to purchase the merchandise. The merchandise was purchased of Otogosha and Yoshida, with direction to ship direct to Manila. Otogosha and Yoshida did in fact ship the potatoes and onions from Japan to Manila upon bills of lading which stated, that the goods were received from Otogosha and Yoshida to be delivered "unto order, notify Jap Hoo Co." The bills of lading were indorsed in blank by Otogosha and Yoshida and delivered by them to Tagawa's representative in Kobe. They were then attached to drafts drawn by M. Tagawa on Jap Hoo and Co., Manila, payable thirty days after date to the order of the Yokohama Specie Bank, Ltd. On each of the drafts, with the possible exception of one, were written the marks "D. P.," which meant that the bills of lading were not to be delivered until the drafts were paid. Upon dishonor of the drafts accepted by Jap Hoo and Co., M. Tagawa and Co. was so notified, and the drafts and documents were indorsed and delivered to the latter company.

In connection with the above narration of events, it should further be mentioned that when the potatoes and onions reached Manila, they were delivered by the Collector of Customs to the consignee, Jap Hoo and Co., notwithstanding this company did not have the bills of lading, after requiring it to file indemnity bonds, with the Union Guarantee Company, Ltd., as surety, guaranteeing the production of the bills of lading within a period of four months, and undertaking to pay P17,950 to the Collector of Customs in case of default.

Out of the foregoing situation arose the present action, originally brought by M. Tagawa for whom later, as above said, there was substituted as plaintiff, the Nanyo Shioji Kaisha, against Vicente Aldanese, Insular Collector of Customs, to recover P16,700, with legal interest and costs. At the instance of the Collector of Customs, the Union Guarantee Company, Ltd., was later joined as a party defendant. At the trial, the plaintiff presented as witnesses Mischuchi Toshimura of the Nanyo Shioji Kaisha, Elias Buñe, customs broker, Emilio Velez, secretary of the board of protests and appeals of the Bureau of Customs, and Gerardo Cruz, an employee of the Yokohama Specie Bank. The plaintiff also introduced the applications to enter goods without bills of lading, including the bonds to produce the bills of lading, executed by Jap Hoo and Company and the Union Guarantee Company, Ltd., the bills of lading, and the drafts. The defendants waived their right to present evidence. The judgment handed down by the Honorable Pedro Concepcion, Judge of First Instance, was that the Insular Collector of Customs pay the plaintiff the sum of P16,700, with legal interest, beginning with March 30,1920, and that the Union Guarantee Company in turn pay the Government of the Philippine Islands the same sum of P16,700, with legal interest from the said date, and the costs, with the understanding that the liability of the Union Guarantee Company was limited to P17,950, the total amount of the bonds.

The six errors assigned by the Union Guarantee Company, Ltd., and the first four errors assigned by the Attorney-General can be considered together. They relate generally to the facts which, however, we think have been accurately stated by the trial court, and which are, in brief, as summarized in this decision. Additional to our pronouncement on the facts, and to the findings of the trial court, some further observations are, however, appropriate.

First of all, it is well to have before us the controlling provisions of law which permit the Collector of Customs to deliver merchandise to a consignee without the surrender of the bill of lading. Section 1316 of the Administrative Code provides:

> "When a collector of customs delivers merchandise without the surrender of the

> proper bill of lading, he may protect himself from any liability to the rightful Holder of the bill by requiring the person to whom delivery is made to execute a sufficient bond in an amount greater than the invoice, or manifest, or in the absence of both, greater than the appraised value of the merchandise. Such bond shall run to the Government of the Philippine Islands, for the benefit of whom it may concern, and shall be conditioned for the production of the proper bill of lading or for the satisfaction of any damages occasioned to its lawful holder by reason of wrongful delivery."

It was pursuant to the above quoted provision of law that the Insular Collector of Customs authorized seven bonds to be executed in this case. One of these bonds, typical of others in this and similar cases, we reproduce for purposes of reference, namely:

> *"Know all men by these presents,* That we, Elias Buñe, Custom House Broker, for Jap Hoo & Co., as principal, and Union Guarantee Company, Ltd. of Manila, as sureties, are held and firmly bound unto the Government of the Philippine Islands, in the sum of *Three thousand seven hundred and no/100 pesos* (P3,700) to be paid to the Government of the Philippine Islands, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.
>
> "Whereas, the above-bounden principals have applied to the Collector of Customs for the Port of Manila, P. L, to make entry of certain goods, wares, and merchandise imported in the S. S. *Arabia Maru*, from Nagasaki, and described in Free Entry; of which said goods, wares, and merchandise the said principals are the owners and to the immediate possession of which they are entitled, and
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> "Whereas, the bill of lading issued against the said merchandise has not been received by the said principals and to the best of their knowledge and belief is not now in the city of Manila, nor in the Philippine Islands, nor in the hands of any person or party claiming an interest in the same or a right to the possession thereof, and
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> "Whereas, for the above-stated reason it is now impracticable for the said principals to produce the said bill of lading for the purpose of making entry of the above referred to goods, wares, and merchandise in accordance with law:

"Now, therefore, the condition of this obligation is such that if the above-bounden obligors or either of them, or any of their heirs, executors, or administrators, shall within four months from and after date hereof, produce to the Insular Collector of Customs, acting as Collector of Customs for the port of Manila, the original bill of lading covering the above-specified shipment of merchandise, duly indorsed, showing the ownership of said merchandise to be in the principals of this bond, then the above obligation shall be void; otherwise it shall remain in full force and effect.

"Sealed with our seals, and dated at Manila, P. I., the 20th day of March, in the year one thousand nine hundred and nineteen.

"B. L. No.-1-
"Marks -J. H.-600 Crates.
"Value $1,645.05.
"Approved:
(Sgd.) "J. OBIETA,
"Insular Deputy Collector of Customs.
"ELIAS BUÑE, *Customhouse broker. "*
FOR JAP HOO & CO.
"BY M. BARRIOS.
"UNION GUARANTEE COMPANY LTD.
(Sgd.) "R. E. HUMPHREYS,
"President.
"Cedula F-3653, Jan. 3, 1919
" Manila, P. I."

Passing now from the facts, and the law, and the bonds, we note that this court has heretofore applied the rule, that no action can be brought upon an indemnity bond until it is shown that some person has been damaged by reason of a failure to comply with its terms. Without attempting to differentiate between a simple contract of indemnity against damages and a contract of indemnity against liability for damages, the court has accepted the general common-law rule, that, to authorize a recovery upon a bond of indemnity, actual damage must be shown. (Government of the Philippine Islands vs. Union Guarantee Company, R. G. No. 16700, decided Jan. 25, 1922, not published; Government of the Philippine Islands vs. Tan Liuan & Co. and Union Guarantee Company, R. G. No. 18139, decided May 25, 1922, not published; Hongkong & Shanghai Banking Corporation vs. Aldanese and Union Guarantee Company, R. G. No. 18520, decided Sept. 23, 1922, not published; Government of the Philippine Islands vs. Aw Yong Chiong Soo and Union Guarantee Company, R. G. No.

18483, decided Sept. 28, 1922, not published.) As said by the United States Supreme Court, in the cases of indemnity contracts "the obligee cannot recover until he has been actually damnified, and he can recover only to the extent of the injury he has sustained up to the time of the institution of the suit." (Wicker vs. Hoppock [1867], 6 Wall., 94.)

This view, we take it, is correct under Philippine law, because the amount of the bond is made greater than the value of the merchandise as disclosed by the invoice or manifest or by the appraised value, while the purpose of the bond is simply to protect the Collector of Customs from liability. The liability of the Collector of Customs is determined not by the sum named in the indemnity bond, but by the value of the merchandise which he has surrendered without the proper bill of lading, and this latter sum in turn fixes the damages which the principal and surety on the indemnity bond should make good to the Collector of Customs so that he can reimburse the holder of the bill of lading. In addition, therefore, to proving the execution of the bonds, the delivery of the merchandise, the non-presentation of the bills of lading within the four months' period, and the presentation of the bills of lading by the holder, the plaintiff should establish his actual damages by means of proof showing either the invoice, or the manifest, or the appraised value of the merchandise, or all of these together, the amount of the draft where the bill of lading is not to be delivered until the draft is paid, and the dishonoring of the draft.

Unfortunately, in none of the previous cases which are herein cited, has the plaintiff made out a case. For instance, in the case of the Government of the Philippine Islands vs. Union Guarantee Company, R. G. No. 16700, supra, at the time the action was brought no bill of lading had been presented to the Insular Collector of Customs by any person, so that the Collector of Customs could not have suffered damage by a failure of the delivery of the bill of lading; result, the sustaining of the demurrer presented by the Union Guarantee Company. Again, in the case of the Government of the Philippine Islands vs. Tan Liuan & Co, arid Union Guarantee Company, R. G. No. 18139, *supra*, while a bill of lading was presented by the Yokohama Specie Bank, yet there was not a word of testimony to show the amount of damages suffered by the bank, the holder of the bill of lading; result, judgment reversed, and the complaint dismissed without prejudice. Again, in the case of the Hongkong & Shanghai Banking Corporation vs. Aldanese and Union Guarantee Company, R. G. No. 18520, *supra*, the only attempt at proof was by way of a so-called stipulation which represented the conversation between the presiding judge and counsel; result, judgment reversed with instructions. Again, in the case of the Government of the Philippine Islands vs. Aw Yong Chiong Soo and Union Guarantee Company, R. G. No. 18483, *supra*, the plaintiff failed to prove the amount of his damages with any degree of certainty; result, judgment

reversed without prejudice.

In pleasing contrast with the cases above-mentioned, is the one before us. The insinuation of counsel that there was a conspiracy between M. Tagawa and Co. and Jap Hoo and Co. to defraud the Union Guarantee Company, is unsupported by either proof or logic. The value of the merchandise is proved by the admission of the Attorney-General alleging a stipulation, by the drafts, and by the shipping documents. The protest of the drafts by the Yokohama Specie Bank is shown by the charges for protest fees and by the testimony. M. Tagawa, with the drafts and bills of lading in his possession, was entitled to possession of the merchandise.

There remains for resolution the last assignment of error made by the Attorney-General relating to the judgment of the trial court circumscribing the responsibility of the Union Guarantee Company, with reference to the payment of interest and costs, to P17,950, the total amount of the indemnity bonds.

As a necessary part of his damages, an indemnitee may also recover against his indemnitor interests and costs. The early cases, however, did not allow interest where the damages were thereby made to exceed the amount of the indemnity bond. The modern cases announce the generally accepted rule that interest may be added to the amount of recovery on a bond, although the total sum is thereby made to exceed the penalty of the bond. (American Surety Co, vs. Pacific Surety Co. [1908], 81 Conn., 252; 19 L. R. A, [N. S.], 83, and note.) This is the rule which we adopt for the Philippines. The theory is that interest is allowed only by way of damages for delay upon the part of the sureties in making payment after they should have done so. In some states, the interest has been charged from the date of the judgment of the appellate court. In this jurisdiction, we rather prefer to follow the general practice, which is to order that interest begin to run from the date when the complaint was filed in court, in this instance, when the Union Guarantee Company was made a defendant, on May 22, 1920.

The result is, that the judgment is affirmed, with the modification that interest shall begin to run from May 22, 1920, and that no mention shall be made of the limitation of the liability of the Union Guarantee Company, to the total amount of the bonds. The costs of this instance shall be taxed against the Union Guarantee Company. So ordered.

Araullo, C. J., Street, Avanceña, Villamor, Ostrand, Johns, and *Romualdez, JJ.,* concur.

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