

46 Phil. 713

[ G.R. No. 18520. September 23, 1922 ]

**THE HONGKONG & SHANGHAI BANKING CORPORATION, PLAINTIFF AND APPELLEE, VS. VICENTE ALDANESE AND UNION GUARANTEE CO., LTD., DEFENDANTS. UNION GUARANTEE CO., LTD., APPELLANT.**

**D E C I S I O N**

**ROMUALDEZ, J.:**

The dispositive clause of the judgment appealed from is as follows:

“The defendant Vicente Aldanese, in his capacity as Collector of Customs, is sentenced to pay the Hongkong & Shanghai Banking Corporation the sum of \$9,340.80, United States currency, with costs. Messrs. Vamenta & Co., Isidro Vamenta, and Union Guarantee Co., Ltd., are sentenced to pay the same sum to Mr. Vicente Aldanese, in his aforesaid capacity, with the costs. In the event that the Union Guarantee Co., Ltd., be compelled to pay the whole or any part of the said sum to the defendant Mr. Aldanese by reason of the insolvency or inability to pay of Messrs. Vamenta & Co. and Isidro Vamenta, the latter are sentenced to pay said surety company all such sum as it may have paid as aforesaid, together with the costs. Each and every payment to be made under this judgment shall be with legal interest at the rate of six per centum per annum from April 29, 1920.

“So ordered.”

The Union Guarantee Co., Ltd., appeals from this judgment, and assigns error to the action of the trial court, among others, in finding that said corporation had given a bond for P9,450 in favor of the Government of the Philippine Islands to enable Vamenta & Co. to withdraw from the customhouse at Manila the merchandise mentioned in the complaint.

The document containing the bond was not presented as evidence, nor was any proof

introduced about it, and what the trial court considered as evidence on this point is merely what it took as a stipulation of facts deduced from the following statements made during the trial, to wit:

“COURT. Counsel for Vamenta & Co. and Isidro Vamenta admits that said company and Isidro Vamenta personally are liable to the defendant Collector of Customs and the Hongkong & Shanghai Banking Corporation in the manner to be determined by the court for the value of the merchandise withdrawn from the customhouse and sold by them, which merchandise is worth \$9,340.80, United States currency, according to the complaint.

“Mr. Ferrier. But we are in a situation where the Union Guarantee Co., Ltd., is entitled to a judgment against Vamenta & Co.

“COURT (continuing). Same counsel, according to Attorney Ferrier, who represents the surety company, Union Guarantee Co., Ltd., states that to protect its interests, he agrees to a judgment being rendered against the debtors and in favor of the Union Guarantee Co., Ltd., in the event that the latter, after the issuance of an execution upon the judgment, shall be compelled to pay the amount aforementioned or any part thereof on account of the insolvency of said debtors.

“Mr. Ferrier. It is also agreed between the parties that the Union Guarantee Co., Ltd., was a company organized and existing under the laws of the Philippine Islands, and Vamenta & Co. was a company not registered. We have no more objection to the action of Vamenta & Co. and Isidro

Vamenta.” (Folios 4 and 5, transcript, stenographic notes.)

It is true that from the above statements of the trial court not contradicted by Mr. Ferrier, attorney of the Union Guarantee Co., Ltd., it may be inferred that this corporation, through its said counsel, admitted by his silence to be surety of Vamenta & Co., although such an inference is not entirely justified inasmuch as it is based rather on the silence of said attorney when said statements were made by the trial court, which undoubtedly attempted to construe the intention of the parties.. The Union Guarantee Co., Ltd., now insists in this court that the so-called stipulation of facts set out in the judgment appealed from is not the

one that was really entered into by the parties.' And, as we have seen, the record is doubtful as to whether or not there was really such a stipulation as was stated by the trial court.

But even supposing that said statements are sufficient to bind the Union Guarantee Co., Ltd., the fact is that there is no evidence, not even a scintilla of evidence, as to the amount of this bond which, according to paragraph (f) of the answer of the defendant Collector of Customs, was given for the sum of P9,450.

The existence, terms, conditions and amount of the bond given by the Union Guarantee Co., Ltd., as surety of Vamenta & Co., in favor of the Government of the Philippine Islands, are facts that must be proven or admitted by the parties before any judgment can be rendered against said corporation, as prayed for in the answer of the Collector of Customs.

And there exists an intimate connection between the liability of the Collector of Customs to the Hongkong & Shanghai Banking Corporation, and the liability of Vamenta & Co. and the Union Guarantee Co., Ltd., to the Collector of Customs, which latter liability cannot be fixed without sufficient proof of the scope and conditions of the bond in question. We think that this case requires further evidence, and to do justice to all the parties interested, we have decided to remand the record to the court of origin in order that the proper party may introduce competent evidence as to the existence, conditions and amount of the alleged bond given by the Union Guarantee Co., Ltd.

The judgment appealed from is reversed and this cause ordered remanded to the court below for the holding of a new trial for the purposes above indicated, without special finding as to costs. So ordered.

*Araidlo, C. J., Johnson, Street, Malcolm, Avancena, Villamor, Ostrand, and Johns, JJ., concur.*

*Judgment reversed.*