FURST AND THOMAS *v.* ROWLAND.

4-3294

Opinion delivered February 12, 1934.

1. GUARANTY—NEGLECT TO GIVE NOTICE OF DEFAULT.—Guarantors assuming an obligation without compensation are entitled to the protection usually accorded to accommodating sureties.
2. PRINCIPAL AND SURETY—LIABILITY OF SURETY.—An accommodation surety is bound only by the strict letter of his contract.
3. PRINCIPAL AND SURETY—LIABILITY OF SURETY.—One who delivers goods to a dealer under a contract requiring the dealer to make weekly report of his receipts to the former was bound to require such reports and to report immediately such omissions to the

sureties in order to recover from the sureties the amount due from the dealer.

Appeal from Pulaski Circuit Court, Second Division; *Richard M. Mann,* Judge; affirmed.

STATEMENT BY THE COURT.

Appellants brought this suit in the Pulaski Circuit Court against C. B. Rowland, as principal, and P. A. Rowland and W. A. Cravens, as sureties, to recover for goods, wares and merchandise delivered by appellants to C. B. Rowland pursuant to a certain dealer's contract theretofore executed, the performance of which was alleged to have been guaranteed by appellees, the sureties therein designated. By the terms of the dealer's contract, appellants agreed to deliver to C. B. Rowland, at current wholesale prices, their manufactured products as ordered by the principal, so long as the account was in a satisfactory condition. C. B. Rowland, the principal, agreed to pay the wholesale prices, less discounts, to appellants. Appellants reserved the right to limit the amount of credit extended to the principal, or to refuse to fill orders in whole or in part, if, in the judgment of appellant, the account was in an unsatisfactory condition. It was further stipulated that, upon the termination of the contract, the principal was to have the privilege of returning to appellant unsold goods on hand. The contract also contained the following stipulation: "The dealer, as a matter of good faith and to show what the receipts of his business are from week to week, agrees to send Furst & Thomas each week an itemized record of his business on forms provided for that purpose by them."

On the trial of the case, it was stipulated between the parties that C. B. Rowland was indebted to appellants under said contract in the sum of $1,173.71, and judgment was rendered against C. B. Rowland for said amount, and no appeal has been prosecuted therefrom.

The suit was defended by the sureties on C. B. Rowland's contract, upon the theory that the principal, C. B. Rowland, had failed and neglected to make weekly reports to appellants, as provided for in the contract, and that appellants had acquiesced therein, and had given no notice to the sureties of such omissions.

The testimony was to the effect that C. B. Rowland, the principal, sometimes neglected to make the weekly reports for six or eight weeks, and would then make reports covering the whole neglected period. During the period of neglect, appellants continuously insisted that the reports be made by the principal, but the sureties were never notified of these defaults and neglects by the principal.

Appellant requested the court to direct a verdict in their behalf, and requested no other instructions. This peremptory demand was refused. The court thereupon gave to the jury instruction No. 2, which reads as follows:

"The jury is instructed that the dealer's contract, executed between defendant, C. B. Rowland, and plaintiffs, provided in part as follows: 'The dealer, as a matter of good faith and to show what the receipts of his business are from week to week, agrees to send Furst & Thomas each week an itemized record of his business on forms provided for that purpose by them.' If you find from the evidence in this case that defendant, C. B. Rowland, failed to make such weekly reports to plaintiffs, and that plaintiffs failed to notify defendants, P. A. Rowland and W. A. Cravens, sureties, of the failure, if any, of defendant, C. B. Rowland, to make such reports, you will find for the defendants, P. A. Rowland and W. A. Cravens; unless you so find, you will find for the plaintiffs in the sum of $1,173.71."

Appellants objected to the giving of instruction No. 2, and these present the questions for consideration.

The jury returned a verdict in favor of the sureties, and a judgment was entered thereon, from which this appeal is prosecuted.

Barber & Henry, for appellant.

Tom F. Digby, for appellee.

JOHNSON, C. J., (after stating the facts). We think this case is ruled by *Athletic Tea Co.* v. *McCormack,* 159 Ark. 407, 252 S. W. 7. In the case referred to, this court had under consideration the liability of sureties on a sales contract, in all essential respects not dissimilar to the one here under consideration. There, as here, the

contract provided for weekly reports by the principal to the obligee, which provision was ignored by the principal and acquiesced in by the obligees, and we stated the law as follows:

"Where one employed as sales representative of appellant gave a bond, with appellee as surety, obligating himself to make weekly reports of "stock on hand and in transit," such provision was for the benefit of appellee as well as of appellant; and where appellant failed to require such report and to notify appellee of such omission, he thereby discharged appellee from liability on the bond."

Appellants contend that the instant case may be differentiated from the case referred to in that in the instant case appellees are guarantors, whereas, in the case referred to, the contract was one of suretyship.

We need not here determine whether appellees are sureties or guarantors. In either event, their obligations were assumed without compensation. In either event, they are entitled to all the protections usually attendant upon accommodating sureties.

We are definitely committed to the doctrine that an accommodation surety is bound only by the strict letter of his contract of suretyship. *Miller* v. *Friedheim*, 82 Ark. 592, 102 S. W. 372.

Under these circumstances, it was the duty of appellants to require the weekly reports from its dealer according to the terms of the contract, and, if and when omissions were encountered, to immediately notify appellees of such defaults. This appellants wholly failed to do.

When thus viewed, it is apparent that the trial court, in giving instruction No. 2 and refusing to direct a verdict in favor of appellants, was following the letter of our holding in the case referred to.

Other alleged errors, in reference to the introduction of testimony, are urged upon us in briefs, but, since the views above expressed are decisive of the case, it is unnecessary to discuss them.

No error appearing, the judgment is affirmed.