319.1 - S-3 PERIODIC REPORTS

1st BN. 63rd INF. CT, 6TH MD

1 Jan-63

SIXTH MILITARY DISTRICT
HQ, 1ST BN 65D INF CT

S-3 PERIODIC REPORT

From: 1 February 45, 001 A.M.
To : 28 February 45, Midnight
Issued: 1 March 45

No..... 34

Maps: (None)

I - OUR FRONT LINES:

In accordance with Team Field Order No. 20, dated 18 Feb 45, our units are organized in position from the limiting point of the 5d Bn, 65d Inf on the JARO-MANDURRIAO Road extending along the dike west of the DUNGON Creek, up to the vicinity of JIBAO-AN with the following missions:

(1) To deny the enemy of all approaches from the direction of JARO-PAVIA.
(2) To establish outpost position along DUNGON Creek and send constant patrols as far as the vicinity of JARO to observe hostile disposition and operation.
(3) To strengthen our position by laying barbed wire entanglements no less than 50 yards to the front.

II - LOCATION OF TROOPS:

A- Command Posts:-

Bn CP ---------- San Miguel
Bn FCP ---------- Mandurriao
Bn Relay Stations ----- Mandurriao
Takas, Mandurriao
San Miguel

B- Disposition:-

(1) "A" Co. is disposed along the irrigation canal from the JARO-MANDURRIAO Road extending left along the dike to as far as it could possibly occupy, facing JARO, connecting right flank of "C" Co.
(2) "C" Co. is disposed from the limiting point of "A" Co. extending left along the dike, connecting right flank of "B" Co.
(3) "B" Co. is disposed from the limiting point of "C" Co. extending left along the dike connecting the right flank of "I" Co.
(4) "I" Co., 65d Inf, tactically attached to this Bn, is disposed from thel limiting point of "B" Co. extending along the dike to as far as it could possibly occupy towards Bo. TAKAS.



( over )

he who retains money which he ought to pay to another should be charged interest upon it. The difficulty is that it cannot well be said one ought to pay money, unless he can ascertain how much he ought to pay with reasonable exactness. Mere difference of opinion as to amount is, however, no more a reason to excuse him from interest than difference of opinion, whether he legally ought to pay at all, which has never been held an excuse. When one is held liable, say, on a promissory note, to which his defense has raised a doubtful question of law, he must pay the interest with it, because theoretically at least, there was a fixed standard of legal obligation, which, if correctly applied, would have made his duty clear. So, if there be a reasonably certain standard of measurement of the correct application of which one can ascertain the amount he owes, he should equally be held responsible for making such application correctly and liable for interest if he does not. The New York courts have adopted as designation of such a standard "market value," and in a broad use of the term this is perhaps the safest test to apply. It must not, however, be restrained to definite quotations on a board of trade, or to such degree of certainty that no difference of opinion could exist. If one having a commodity to purchase or certain services to hire can by inquiry among those familiar with the subject learn approximately the current prices which he would have to pay therefor, a market value can well be said to exist, so that no serious inequity will result from the application of the foregoing rule to those who desire to act justly; especially in view of the other rule of law that a debtor can always stop interest by making and keeping good an unconditional tender, thus giving him a substantial advantage over a creditor, who has no such option.

Applying the rule thus defined to the facts in this case, there is no escape from the conclusion reached by the court below. The bulk of the recovery is for the contract price of $18,000, less the payments made, which the court found to be $439.62 greater than plaintiff admitted in his complaint; such excess apparently being made up of items which belong rather to the class of counterclaims than payments. The balance of the judgment is made up of plaintiff's extras, less the defendant's counterclaims, viz. $1,004.43. Of this every item was material or labor, which was proved to have a reasonably certain market value at Eau Claire, so that from the statements of witnesses familiar therewith the court was able to fix such value, and the defendant could have done so had he made an honest effort. There involved none of those elements which have been held to make the claim not only wholly unliquidated but unliquidable - no claim for general damages, nor for loss of profits, as in some of the cases; nor even for professional services, which in some cases have been held to be without a sufficiently certain market value, though in other cases the contrary has been held.

The plaintiff's claims then being such as may draw interest, the next question is, from what date? And about this question some confusion has been thrown by the hasty disposal of interest claims and inconsiderate remarks of courts. The rule of course is that the debtor should pay interest from the time when he ought to have paid the debt. That time may be fixed by agreement, and that agreement may be implied from known customs or other things. It may also be fixed by law, as in State v. Guenther, 87 Wis. 676, 58 N.W. 1066, in which even the interest runs from the date so fixed. If not fixed, interest will not commence to run until the creditor

III - INFORMATION OF ADJACENT UNITS AND SUPPORTING TROOPS:

(a) Adjacent Units:-

1. 2d Bn, 65d Inf operating at MOLO
2. 3d Bn, 65d Inf at our right in coordination with the 2d Bn, 65d Inf
3. Combat Company, 65d Inf at our left

(b) Supporting Troops:-

1. FA Detachment, 65d Inf in support
2. Engr Detachment, 65d Inf in coordination with the 65d Inf

IV - WEATHER AND VISIBILITY:

(a) Terrain under our control:-
Terrain over which our units are operating are favorable to our troops.

(b) Fields of Fire and Observation:-
Our fields of fire are excellent because of open fields and due to the fact that our positions are well selected. From such positions we enjoy the same advantage of good fields of observation.

(c) Visibility:-
Visibility was excellent due to good weather during the period.

V - OUR OPERATION FOR THE PERIOD:

1. Combat Engagements:-

| No. | Date | Officer-in-Charge | Unit | Place | No. of Enemy Force | No. of Own Force | CASUALTIES Enemy Kd | CASUALTIES Enemy Wd | CASUALTIES Own Force Kd | CASUALTIES Own Force Wd | WAR BOOTIES |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 1. | 5 Feb. | Lt. Sorianosos,F. | 1st Sec B-Co | Jibaoan Crossing | Unknown | 1 Sec | Not Verified | | | | None |
| 2. | 6 Feb. | Lt Correa,D. | C-Co | Pandac, Buitay, Pavia | 30-40 | 1 Co. | | Unknown | 4 | | 5 Sacks Palay |
| 3. | 6 Feb. | Lt Labto,C. | B-Co | Takas, Mandurriao | 30-40 | 1 Co. | Not Verified | | | 1 | None |
| 4. | 6 Feb. | Capt Guidoriagao,J. | A-Co | Mandurriao Proper | 100-150 | 1 Co. | 3 | Unknown | | | 2 Jap Steel Helmets, 1 vest, 1 pile hat, 1 shirt |
| 5. | 7 Feb. | Lt Correa,D. | C-Co | Takas, Mandurriao | 100-150 | 1 Co. | 5 | Unknown | 1 | | 4 cans sugar |
| 6. | 10 Feb | Capt Guidoriagao, | A-Co | Mandurriao | 300 | 1 Co. | Not Verified | | | | None |
| 7. | 10 Feb | Lt Labto,C. | B-Co | Mandurriao | 300 | 1 Co. | " | | | 1 | None |
| 8. | 10 Feb | Lt Correa,D. | C-Co | Mandurriao | 300 | 1 Co. | " | 1 | | | None |
| | | | | TOTAL ---------- | | | 12 | Unknown | 2 | 2 | |

( over )

give interest in all cases in which interest was then recoverable by law, and upon all debts for an ascertained amount, payable by virtue of a written contract at a certain time, from the date when such debts were due and payable, and that if the debtx was not evidenced by such written instrument, interest was recoverable from the time when written demand for payment was made, such demand giving notice of an intention to claim interest. The statute also provided that in actions of trover and trespass de bonis asportatis, and in actions upon policies of insurance, the jury might, in their discretion, allow interest as part of the recovery.

e. In the United States. - In the United States the courts seem, from the outset, to have viewed the allowance of interest with greater favor than the courts of England, either upon an implication regarded as arising from the mere delay in the payment of a money debt, or specifically as damages for the nonpayment of a debt due.

f. In Canada.- While the Canadian cases are controlled to a large extent by English precedents, there seems to be a tendency to a greater liberality in the allowance of interest.

LAYCOCK vs. PARKER, 79 N.W. 537; Cooley, Cases on Damages.152.

Action by Henry Laycock against Anna E. Parker to foreclose a mechanic's lien. The contract under which the building was erected provided that the work should be completed by September 15, 1893, that alterations should be made only on written order of the architects, and that the value of the work added or omitted should be computed and the amounts as ascertained added to or deducted from the contract price according to circumstances; that the contract price should be $18,000. The building was substantially completed January 26, 1894. The last work was done May 21, 1894, up to which time the payments made aggregated $12,995. At the trial the court allowed the plaintiff for balance due on the contract $5,005, and for extras, $1,757; and allowed defendant as counterclaim for omissions $400, and for damages for delay $283, resulting in a net finding for plaintiff for $6,009, for which plaintiff had judgment and an adjudication that he have a lien on the premises. From this judgment defendant appeals.

[illegible], J. Appellant asserts error in that interest was allowed plaintiff on the balance found his due from the commencement of the suit. The question of interest is one much more often passed upon than carefully considered by courts. It is usually presented only incidentally to much more important issues, and often decided one way or the other at the close of exhaustive investigation of the other questions, and with the perhaps unconscious feeling that it is not of sufficient magnitude to justify further serious labor. Again, the elements involved in determining the question are many of them so [illegible] in their application that cases may be rightly resolved in different ways without the distinction being apparent from the statement of them. The question is also one of those upon which the old reasons and principles have been departed from in deference to modern business methods and views of commercial equity, and upon which the law has progressed in a steady development away from the early precedents. Sedg. Meas. Dam. sec. 297.

Anciently interest, called "usury," was an abhorrence to the law, and a contract therefor was not only not enforceable, but criminal. Advance

2. Troop Training:-
All units being in active Combat operations, no training had been conducted.

3. Intelligence Operations:- (Refer to S-2 Periodic Report.)

4. Signal Operations:- (Refer to Signal Unit Report.)

5. Engr Unit:- (Refer to Engr Unit Report.)

6. Transport Unit:- (Refer to Transport Unit Report.)

7. MP Activities:- (Refer to MP Unit Report.)

8. QM Activities:- (Refer to S-4 Periodic Report.)

VI - COMBAT EFFICIENCY:

1. Status of Arms & Ammunitions:- (Please refer to S-4 Periodic Report.)

2. Staus of Food Supplies:- (Refer to S-4 Periodic Report.)

3. Morale of the Troops:-
"A" Co. ---------- Very high
"B" Co. ---------- " "
"C" Co. ---------- " "
Hq & Hq Co. ------- " "
Attached Units ---- " "

4. Battle Experience:-
Due to battle experiency of the members of this Command they had acquired in the past operations, the combat efficiency of this Command is greatly heightened.

5. Military and Educational Background:-
Officers of this Command have a good educational and military background, majority of them being reservists or regulars and were wither high school graduates or college students.
The men too, though a percentage of them are volunteers have good military and educational background. Most of them have gone to schools, they are easily disciplined and made to obey orders.

6. Discipline and Training:-
Discipline is effectively maintained among the men of this Command. No training had been conducted during the period due to all out operations.

7. Leadership and Good Planning:-
Leadership is well displayed by officers and NCOs of this Command thus discipline is effectively maintained among the men.
In the recent operation, officers had planned well the moves against the enemy to dislodge him from his "pockets" as shown by results.

- over -

that no time of payment was fixed, and no demand had been made. In Yates v. Shepardson, 39 Wis. 173, which was a suit for professional services, disputed as to rendition, character, and value, it was held that interest ran from the commencement of the suit. There was no evidence of any earlier demand. The court said, by Lyon, J., who participated in decision of Marsh v. Fraser: "By the well-settled rules of law on the subject of interest, which are stated by the chief justice in Marsh v. Fraser, 37 Wis. 149, no interest can be allowed on the account before the action was commenced."

In Tucker v. Grover, 60 Wis. 245, 19 N.W. 62, a claim for quantum meruit in investigating pine lands (which the court described as "an uncertain one, resting in quantum meruit, being always denied and contested by the defendant, no account thereof rendered nor any demand made for any certain sum, and, of course not susceptible of computation merely to render it certain, it was clearly unliquidated") interest was held recoverable from the commencement of the suit. Gammon v. Abrams, 53 Wis. 323, 10 N. W. 479, was a suit for the reasonable value of a reaper, both the liability and the value being controverted. The court said that interest was properly allowable from the commencement of the suit, and it makes no difference that such value had to be ascertained by evidence. Farr. v. Semple, 81 Wis. 250, 51 N.W. 319, was an action for the reasonable value of the services of a nurse. The court held interest should be allowed from the rendition of account and demand of payment.

On the other hand, in Shipman v. State, 44 Wis. 458, which was a claim for reasonable value of services as an architect, the court held interest not recoverable, saying: "As between individuals, the better rule is that when the right of a party to recover compensation is doubtful, and is contested on reasonable grounds, and the amount due him requires to be adjusted by proceedings in the suit, interest is only recoverable after the right of a party to recover and the amount of the recovery has been determined." Martin v. State, 51 Wis. 407, was a suit for general damages for preventing plaintiff's completion of a contract for the improvement of Fox river, including loss of prospective profits, and the court held interest not recoverable until the amount had been liquidated by an award.

There is thus a clear conflict in the Wisconsin cases in the application of whatever general rules govern the question, and those general rules have not been set forth, except in a very limited way in Marsh v. Fraser, where the question was rather as to whether interest could run before a demand than whether it might have run upon the claim there presented, if a proper demand had been made. Dismissing from consideration Martin v. State, where the claim was clearly unliquidable, being for general damages such as loss of profits, etc., it is obvious that the reasons assigned for refusal of interest in Shipman v. State and State v. Warner would have equally denied such allowance in Farr v. Semple, Gammon v. Abrams, Tucker v. Grover, and Yates v. Shepardson, unless there were elements of uncertainty or distinction not set forth in the two state cases, such, for example, as that there was no market value ascertainable for the services there involved, or because no officer of the state had any lawful power to authoritatively ascertain and settle the amount due.

We think, notwithstanding these two individual cases, that the great weight of authority is in favor of a rule substantially such as that adopted in New York, as above stated. The true principle, which is based on the sense of justice in the business community and on our statute, is that

8. Knowledge of Terrain Features:-
Members of this Command are well familiar with terrain features of the places covered by our sector of operation, majority of them being from this place.

9. Knowledge of Enemy Situation:-
Present situation of the enemy, especially in the City, is well known to us, information being gathered from time to time from civilians evacuating the City.

10. Lack of adequate arms, clothing and sufficient medical supplies, however, greatly affect the combat efficiency of this Command.

VII - RESULTS OF OPERATION:

a. Casualties:-

| 1. Enemy -- | Killed | Wounded | Captured | Other Booties |
|---|---|---|---|---|
| "A" Co. -- | 5 | Not Verified | None | 2 Steel Helmets<br>1 vestiple hat,<br>1 shirt |
| "B" Co. -- | Not Verified | " | " | None |
| "C" Co. -- | 9 | " | " | 3 Sacks Palay<br>4 cans sugar |
| TOTAL -- | 12 | Not verified | None | |

2. Own Troops:- Killed ------ 2 (fr "C" Co.)
Wounded ------- 2 (fr "B" Co.)

b. Ammunitions Expended:-

| | Cal. 30 Enfield | Cal. 30 Carbine | Cal. 45 TSMG | H.G. | Rifle Gr. | Smoke Gr. |
|---|---|---|---|---|---|---|
| "A" Co.-- | 4,483 | 5,762 | 87 | 9 | 1 | 1 |
| "B" Co.-- | 4,653 | 6,780 | -- | - | - | - |
| "C" Co.-- | 2,075 | 3,410 | 106 | 3 | | |
| TOTAL - | 11,211 | 14,952 | 193 | 12 | 1 | 1 |

For the BATTALION COMMANDER:

ADELARDO P. JURAO -62412
1st Lieut-Inf
Bn S-3

/mba
Distribution:-
CO, 65d Inf
S-3, 63d Inf
CO, 1st Bn 65d Inf
Ex-O, 1st Bn 65d Inf
F i l e

fendant's failure to deliver the said sugar."

JOHNS, J.:Jao Pi having violated their contract with Kaisha, and Kaisha having violated its contract with Suiliong, the remaining question is one of the damages, if any, which each vendee is entitled to recover from its respective vendor. By their contract, Jao Pi agreed to deliver the 3,000 piculs of sugar to Kaisha on a specified date, to wit: April 19,1920. Relying upon this contract, and upon the 17th of April, 1920, Kaisha sold the same amount and quality of sugar to Suiliong for April delivery. It is very apparent that the parties then contemplated that, concurrent with the delivery of the sugar by Jao Pi to Kaisha, Kaisha would deliver the same sugar to Suiliong. In other words, that the one delivery would be concurrent with, and contingent upon, the other, and that both deliveries would constitute one and the same transaction.

Nizuchi Yoshimura of the Kaisha company, testified that, before the offer of delivery was made, he notified the defendants of the sale of the sugar to Suiliong.

When Jao Pi announced on April 24th that they were ready to deliver the sugar, it was then examined and inspected by both Kaisha and Suiliong, and Suiliong rejected the sugar because it was not of the grade or quality specified in the contract, and, for such reason, Kaisha also rejected sugar. The fact that the sugar was examined by both parties before its delivery is conclusive evidence that Jao Pi knew that Kaisha had sold the sugar to Suiliong, and that upon its receipt by Kaisha, the sugar was to be delivered to Suiliong. Again, from the very nature of the transaction, Jao Pi must have known that Kaisha bought the sugar for sale and not consumption. The amount was 5,000 piculs, and Kaisha was engaged in the buying and selling of sugar.

Upon their contract, Jao Pi were to deliver the sugar April 19th at the agreed price of ₱21,50 per picul, and, under its contract, Kaisha was to deliver the sugar to Suiliong in the month of April for ₱25 per picul. Under the facts, we are of the opinion that it was the purpose and intent of all parties that both deliveries should be concurrent. There is no evidence that any portion of the contract price was ever paid, and, hence, the market price should have been made.

The rule is well stated in Ruling Case Law, vol. 24, sec. 336:

"Determination of market value; time and place generally.-It is ordinarily the rule that the market price or value at the time and place of delivery is to be taken as the criterion for fixing the general damages, and it has been pointed but that this is undoubtedly the rule both in England and in this country as respects time where the price has not been paid in advance. Where, however, the price of the commodity contracted to be delivered has been paid prior to the time for delivery, a somewhat different rule obtains according to some of the authorities, and it has been held that in such case the buyer is not confined in his recovery to the difference between the contract and market price on the day of delivery, but he may recover the higher market price between the day for delivery and the time suit is brought or the time of trial provided the plaintiff does not unreasonably delay the institution of his suit." Cyc. vol. 35, p. 465, says:

"The elements of substantial damages are many and vary according to the particular circumstances of the case. It is, as are direct, certain, or liquidated, and which result naturally and directly from the breach, and which may reasonably be regarded as within the contemplation of the parties at the time of the sale as the probable consequence of a breach.