

**PHILIPPINE VIRGINIA TOBACCO ADMINISTRATION, PETITIONER,
VS. HON. WALFRIDO DE LOS ANGELES, AS JUDGE OF THE COURT OF
FIRST INSTANCE OF RIZAL, BRANCH IV, QUEZON CITY, AND
EASTERN V...**

G.R. No. L-33079. December 11, 1978

Ponente: FERNANDO, J.

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FERNANDO, J.:

The controversy that gave rise to this petition for review by certiorari from a decision of the then respondent Judge Walfrido de los Angeles of the Court of First Instance of Rizal, Branch IV, Quezon City, arose from a fire that destroyed the redrying plant of petitioner Philippine Virginia Tobacco Administration, hereinafter referred to as the PVTa, at Agoo, La Union, as a result of which private respondents[1] suffered losses arising from the sale and delivery of tobacco to Central Cooperative Exchange, Inc., to be subsequently referred to as the CCE, the authorized agent of petitioner. It was named defendant in the lower court but is not a party to this appeal. The decisive point at issue is thus the liability of petitioner for the damage incurred by private respondents. The lower court, according to the facts as found by respondent Judge, entitled to respect by this Tribunal only a question of law being properly before it,[2] decided the case in favor of private respondents. The affirmance of the decision, as will be explained more in detail, is indicated.

The decision now sought to be reviewed stated the nature of the case thus: "In their second amended complaint, the plaintiffs allege that they are private corporations; that they were recognized by the defendants as trading entities of the defendant Philippine Virginia Tobacco Administration (PVTa) in connection with the trading and buying of locally grown Virginia tobacco in 1963; that pursuant to Section 4 of Republic Act No. 2265, under which the defendant PVTa has the power and duty to direct, supervise and control all functions and operations with respect, among other things, to the trading of Virginia tobacco and to buy locally grown Virginia tobacco, the PVTa entered into a management contract with its co-defendant Central Cooperative Exchange, Inc. (CCE); that under this contract, the CCE obligated itself to procure, redry and service Virginia tobacco for the PVTa and to advance the payment of tobacco to the trading entities at the government price support plus transportation, overhead and other specified expenses; that on various dates in 1963, the plaintiffs delivered to the PVTa through the CCE in the latter's redrying plant at Agoo, La Union, certain quantities of tobacco under particular BIR Guias; that the shipments are those enumerated in Annex 'B' of the second amended complaint (some of which however were later dropped upon proper motion); that the payment of these tobacco shipments was refused by defendants without reason; hence this suit. The plaintiffs pray for the value of their respective shipment plus legal interests computed 48 hours from date of acceptance thereof, and damages, attorney's fees and the costs." [3] After noting that the defendants, now petitioners, filed their answer containing specific denials and special defenses, it went on thus: "In its answer the defendant PVTa alleged that the shipments were not accepted by it and the CCE; that if they were accepted, they were not properly accounted for by the CCE and 'were in fact reported burned in the fire that razed down the plant on or about July 24, 1963, brought about by the carelessness and negligence of the said

defendant CCE.' It alleged a counterclaim against plaintiffs Allied Tobacco Planters, Inc. and San Juan Planters, Inc. for the balances in the respective amounts of P14,162.47 and P2,683.38 of their merchandizing loans from the PVTa. It also filed a cross-claim against the CCE to the effect that the latter should be held liable to pay whatever amount the PVTa may pay to the plaintiffs. On its part, defendant CCE alleged the special defense that it only acted as agent of the PVTa in the transactions subject matter of the case."[4]

The matter in issue was further clarified in the decision in this manner: "The juridical personality of the plaintiffs are admitted in the answers of the defendants, and in their answers to plaintiffs' request for admission, they admitted that the plaintiffs were recognized in 1963 as trading entities of the PVTa. They also admitted their management contract in 1963 for procuring, redrying and servicing; they also admitted that the 1963 tobacco trading started in April, 1963, and that on July 24, 1963, a fire occurred in the redrying plant of the CCE, destroying tobacco shipments therein of various trading entities, and that this fact was reported to the PVTa. Under the aforesaid management contract, the CCE was given by the PVTa an allocation of a million kilos of Virginia tobacco to procure, redry, store and service for the PVTa. The CCE was supposed to advance payment of the shipments 48 hours from acceptance, but from the evidence in this case it appears that actually the payments were made by the PVTa itself evidently in order to control disbursements more effectively. The PVTa had rules and regulations, among them Circulars 2 and 4, to govern the tobacco trading operations. It assigned men to the provinces to supervise these operations and enforce observance of these rules and regulations."[5] Plaintiffs in the lower court, now respondents, through their officers, "testified that after the fire and even in the next following years, they made demands for the payment of their shipments but these demands were ignored. Mention should be made of the testimony of Constante Somera who in 1963, besides being the manager of plaintiff Tagudin Facoma, was President of the National Federation of Facomas, Vice-President of the Ilocos Sur Federation of facomas, and a member of the Board of Directors of defendant CCE. He testified that in about five occasions, officers of all the plaintiffs went to him for assistance in the collection of their claims, and he headed delegations to the defendants and notably to PVTa Chairman Balmaceda and PVTa General Manager Bananal, but that the latter gave all sorts of excuses such as the need of further study of the matter and the lack of money. So after many attempts proved futile, Somera advised his colleagues that they go to court. As already stated, the PVTa had men in the field to implement its rules and regulations, who were headed by the PVTa provincial tobacco agents. During the trading in 1963, these agents were Jose Singson, Antonio Florendo, Angel Torrijos, Jorge Peneas, Manuel Festejo, and Alfredo Cajigal. The plaintiffs presented Bernardo Navarrete, the head of the Field Services Department of the PVTa, and he identified the signatures and initials of the said PVTa provincial tobacco agents in the shipping documents exhibited in this case."[6]

As for the facts found by the lower court, the following was set forth in such decision: "This Court is convinced that there is satisfactory proof that the plaintiffs delivered the tobacco shipments in question to the defendants at the CCE redrying plant in 1963, and that the same were unloaded and awaiting inspection and grading when they were burned on July 24, 1963. As a matter of fact, these facts were testified to by no less than the CCE Trading Officer at the plant, Benjamin Bello, whose duty it was to exercise general supervision over the receiving and storage of Virginia tobacco in the CCE redrying plant in accordance with the PVTa regulations and procedures. Among other things, he declared that he prepared periodic lists of shipments scheduled or unloaded for inspection in order for the CCE plant to know the expected volume of tobacco to be redried and serviced, and he identified the last lists, those dated July 17 and 22, 1963, which indeed include the shipments in question. Romeo Ballestil, PVTa Tobacco Plant Manager in the CCE who testified for the PVTa, in effect confirmed this when he said that there were several inventories made after he assumed the position on July 12, 1963. He also confirmed the fact, as testified to by Bello, that there were many shipments in the CCE receiving ramps and bays which were authorized to be unloaded and awaiting inspection when the plant was destroyed by fire on July 24, 1963; there were in fact

piles of tobacco up almost to the ceiling in some places, and there were piles even in the corridors of the receiving ramps." [7] There were "separate certifications [from Bello] to the effect that according to the records of the redrying plant, the plaintiffs had specified quantities of tobacco under specified Guias ready for inspection and grading at the receiving ramps before July 24, 1963. These certifications are exhibits in this case." [8]

Then came a detailed appraisal of the evidence by the lower court: "From the evidence, it appears that, pursuant to its powers and duties under Republic Act No. 2265, the PVTa issued rules and regulations in respect to its tobacco trading operations, and assigned men to its recognized trading entities, among them the plaintiffs, to see that these rules and regulations were observed. The entities even had to apply with the PVTa and were screened before PVTa accepted them as its trading entities. As admitted by the witnesses of the PVTa, notably Ballesil and Millan, these PVTa men supervised the grading, weighing, baling of tobacco, and other activities in the buying station of the trading entities to which they were assigned. These PVTa men, identified by Ballesil as PVTa Field Inspectors, signed the documents covering tobacco, such as the pre-sales invoices showing names of the farmer sellers, the quantity and grade of tobacco received from these farmers; the abstracts of tobacco purchased; the progressive stock and shipment control form showing the status of stocks after each shipment to the PVTa; the commercial waybill and other documents pertaining to shipments. They saw to it that the tobacco was properly graded and in fact, the PVTa tobacco inspector saw to it that the tobacco was classified according to the standards provided by the PVTa. They also saw to it that the tobacco was properly weighed and baled, and loaded on trucks for transshipment duly sealed. They saw to it also that the shipping documents were complete and in order. These obviously are not the usual acts of an ordinary buyer of a commodity. Among the shipping documents may be mentioned PVTa Form 30, entitled Request for Tobacco Clearance, addressed to the PVTa Provincial Tobacco Agent. According to the defendant's answers to plaintiffs' request for admission, it was the function of this PVTa agent to process the said request and the supporting documents before giving his clearances to the shipment and recommending its acceptance. It was he alone who could decide to what redrying plant the shipment should be sent. All this indicates the extensive intervention of the PVTa in the buying and shipping activities at the level of the trading entities. Once made, the clearance given by the PVTa provincial tobacco agent was an indication that the required shipping documents were complete and in order and that the shipment was strictly in accordance with the PVTa regulations. Upon arrival of the shipment at the redrying plant designated by the PVTa, the shipping documents were delivered to the PVTa traffic officer thereat and were processed. The shipment was then given by the PVTa a gate pass, an unloading permit, and a priority slip stating the time it would be unloaded and graded in the plant. The presence of the shipment is actually verified by the PVTa Plant Manager. A shipment could not be brought inside the plant and unloaded at the receiving ramps without prior authority of the PVTa, and once inside the plant, it could no longer be withdrawn without proper application by the entity concerned addressed to the PVTa general manager. It is thus clear that the PVTa had virtual control over the shipments after they had left the hands of the trading entities. It is also clear that the PVTa, in the implementation of its contract with the CCE, did not delegate to the latter any of its powers and duties under the law to buy Virginia tobacco. In fact Bello testified that PVTa controlled, directed and supervised the CCE in the performance by the latter of all activities in the tobacco trading operations in 1963." [9] Further on this point: "As above stated, the plaintiffs' shipments had long been in the CCE ramps waiting to be inspected when they were burned. According to Ballesil, PVTa Tobacco Plant Manager assigned to the CCE, there was only redrying of tobacco from July 13 until the fire occurred; there was no inspection or acceptance of tobacco shipments. Inspection of shipments was suspended; and he claimed as the reason the alleged lack of space in the transit area where inspected tobacco would be stored to await redrying. Obviously, as a result of delays and suspensions of operations, there arose a backlog of shipments waiting to be inspected at the CCE ramps. But there is no explanation why, considering these suspensions, the PVTa kept on authorizing the unloading of shipments which were not being inspected fast enough. It is also significant that the PVTa states in its answer that the CCE

redrying plant and facilities 'caught fire and burned down due and owing to its (CCE) carelessness or negligence or its officials and employees;' and the PVTA accuses these officials and employees with being 'grossly and inexcusably careless and negligent in not preventing and arresting the spread of the fire.'"[10]

From the above recital, it is easy to understand why, as decided by the lower court, plaintiffs, now private respondents, should prevail: "In the light of the foregoing, the denial of liability on the part of the defendant PVTA cannot be sustained. It has virtual control of the shipments even at the plaintiffs' stations and specially after they had been cleared and sent to the CCE plant and unloaded for inspection at the CCE ramps. It is reasonable to say that these shipments, pursuant to the scheduling and priorities established by the defendants themselves, should have been inspected before July 24, 1963 since they were shipped to the CCE as early as May and June, 1963, as shown in the shipping documents. But they were not inspected early enough, and this is evidently because of delays and suspensions of operations in the CCE plant. This Court wonders whether the causes of the delays and suspensions could have been avoided or minimized by the defendants considering that the trading operations started as early as April, 1963, indicating that they had had enough experience and know-how to enable them to cope with the situation. Moreover, there is the allegation of the PVTA, which may be considered as an admission against interest vis-a-vis the claims of the plaintiffs, to the effect that its own agent and contractor, the CCE, was careless and negligent in causing the fire and in not preventing and arresting the spread of the fire. When all the fault clearly lies with the defendants, it would be the height of injustice to deny the plaintiffs' claims. Their shipments which had long been in the ramps for inspection were not inspected in due time and the delay is traceable to the fault of the defendants, whereas the plaintiffs themselves had done everything that was required of them by the PVTA regulations in order to have their tobacco inspected and paid for. The value of the tobacco is, incidentally, stated in the shipping documents. This Court believes that the PVTA already had the legal control and custody of said shipments and that it should be considered as having accepted them as of the fire and therefore should bear the loss."[11]

Judgment was, therefore, rendered by the lower court "ordering PVTA to pay to the plaintiffs the amount of their respective claims, as follows: * * * Eastern Vigan VTPA, Inc., Guia No. 38 - P26,936.68; San Nicolas Facoma, Inc., Guia No. 76 - P21,622.73; Ilocos Sur Tobacco Industries Corp., Guia No. 109 - P15,922.08; Tagudin Facoma, Inc., Guia No. 445 - P27,743.56; Tagudin Facoma, Inc., Guia No. 450 - P27,284.84; Tagudin Facoma, Inc., Guia No. 439 - P23,669.44; Tagudin Facoma, Inc., Guia No. 438 - P43,725.64; San Juan Tobacco Planters, Inc., Guia No. 30 - P28,351.19; Sta. Monica Tobacco Planters Assn., Inc., Guia No. 17 - P29,677.59; Sta. Monica Tobacco Planters Assn. Inc., Guia No. 18 - P30,980.31; Norfex-Villaviciosa, Guia No. 653 - P22,174.22; Norfex-Villaviciosa, Guia No. 661 - P19,074.79; Boundary VTPA, Guia No. 20 - P28,494.10; Boundary VTPA, Guia No. 24 - P28,494.10; Boundary VTPA, Guia No. 25 - P33,998.74; Luzon Producers Corporation, Guia No. 2 - P18,978.51; Central Reliance Tobacco Farmers Corp., Guia No. 12 - P12,150.00; Lidlidda VTPA, Inc., Guia No. 42 - P21,444.17; Lidlidda VTPA, Inc., Guia No. 48 - P22,590.00; Filipino Agricultural Producers Inc., Guia No. 21 - P23,851.00; Allied Tobacco Planters, Inc., Guia No. 36 - P30,300.00; Allied Tobacco Planters, Inc., Guia No. 38 - P30,165.00; Allied Tobacco Planters, Inc., Guia No. 40 - P33,965.00; La Union Agri. Development Corp., Guia No. 13 - P27,475.00; Asingan Facoma, Inc., Guia No. 183 - P36,000.00; United San Ildefonso VTG Assn., Inc., Guia No. 8 - P31,750.00 with legal interest thereon from August 1, 1963 until fully paid; plus the sum equivalent to 10% of the total amount based on the principal obligation as and by way of attorneys fees, and the costs of suit. The cross-claim of the PVTA against the CCE is hereby dismissed. The plaintiff Allied Tobacco Planters, Inc. is ordered to pay to the PVTA the sum of P14,162.47 with legal interest thereon from August 1, 1963."[12]

As noted at the outset, the appealed decision is entitled to affirmance.

1. It bears repeating that the trial court was satisfied as to the fact of delivery of the tobacco in question at the redrying plant of petitioner agent, the CCE. It was also found by it that the PVTA directed, supervised and controlled the CCE in receiving shipments of tobacco and in the performance of its activities, and that the tobacco, once received from the trading entities, were under its control, not subject to withdrawal without its authority. The procedure was so carefully designed that the supervision by it could be rendered most effective. Thus any attempt to exculpate itself thereafter on alleged deficiencies could succeed only if the evidence offered by petitioner were of such a nature as to justify evasion of what is required by law no less than by morality. Clearly proof of such character was lacking in this case. Hence the way the decision turned. It had to be adverse to its pretension. As a matter of fact, in the brief for petitioner, the Solicitor General made the following admission: "It may be conceded, for purposes of this appeal, that plaintiffs brought the tobacco shipments in question to the CCE redrying plant at Agoo, La Union, in 1963, to be sold to the PVTA, thru CCE, and that the same were unloaded and awaiting inspection, grading and weighing, when they were burned on July 24, 1963." [13]

2. It is likewise worth mentioning that for sometime after the conflagration, there was no question raised as to its liability. At the most, as with some debtors, the delay in payment was sought to be justified for the need for further study or the lack of money. As put by the trial court, "the aforesaid officers also testified that after the fire and even in the next following years, they made demands for the payment of their shipments but these demands were ignored. Mention should be made of the testimony of Constante Somera who in 1963, besides being the manager of plaintiff Tagudin Facoma, was President of the National Federation of Facomas, Vice-President of the Ilocos Federation of Facomas, and a member of the Board of Directors of defendant CCE. He testified that in about five occasions, officers of all the plaintiffs went to him for assistance in the collection of their claims, and he headed delegations to the defendants and notably to PVTA Chairman Balmaceda and PVTA General Manager Bananal, but that the latter gave all sorts of excuses such as the need of further study of the matter and the lack of money. So after many attempts proved futile, Somera advised his colleagues that they go to court." [14]

3. It would thus appear that the merit of the case for private respondents is impressed with merit. So the lower court decided. In this petition for review, the PVTA would assail the judgment reached on the allegation that the contract of sale was not perfected. Such an assertion, on the face of the facts as found, would appear to be clearly untenable. Nonetheless, it was sought to lend it plausibility in the eight-page brief of petitioner by the argument that the shipments of the tobacco in question "were still to be inspected, graded and weighed." [15] Such a contention certainly cannot suffice to overturn the decision. For one thing, it raised an issue of fact, the ruling on which, as could be expected, was adverse to petitioners. For its own fieldmen had the responsibility of such tobacco being graded, weighed, baled and loaded on trucks duly sealed for transportation to its redrying plant. That responsibility was fulfilled as found by the trial court. The grading was done according to the standards on samples provided by petitioner. The shipping documents were in order. The weight and grades of such tobacco were certified by such fieldmen and thereafter processed by its provincial tobacco agent. It was only then that clearance was given, the PVTA requirements having been met. The futility of the effort to deny the perfection of the contract of sale is thus rather apparent. So it has been from *Irureta v. Tambunting*, [16] a 1902 decision. All that was required was that there be an agreement on the thing which is the subject of the contract and upon the price. So it was provided by Article 1450 of the Civil Code of Spain of 1889 then in force. There is difference in phraseology but not in meaning under the present Civil Code: "The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price." [17] It remains to be noted that the *Tambunting* doctrine was followed in subsequent cases. [18]

4. It suffices to recall the relevant facts as found by the trial court to render unmistakable how lacking in persuasiveness is the contention that the contract was not perfected because of an alleged technical defect. *Smith Bell and Company v. Jimenez*, [19] decided in 1963, comes to mind. In that case, there was a delivery by

petitioner of a typewriter upon requisition of the Municipality of Paniqui, Tarlac, but ten days thereafter, the municipal building was totally razed by a fire. Notwithstanding the fact that the Municipal Treasurer, as well as the Provincial Treasurer of Tarlac recommended payment, respondent Auditor disapproved the claim on the ground that the article in question was never presented for inspection and verification, Justice Barrera, speaking for the Court, after noting that there was indeed such delivery, stated that even on the assumption then that not all the terms of the contract as to inspection were fully complied with, "yet upon the facts obtaining in this case, we believe that injustice would be done the petitioner if we apply said principle to the present claim." [20] He stressed both "the law and equity of the case [in holding that] the municipality of Paniqui is legally bound to pay for the price of the typewriter involved herein and, therefore, the decision of the Auditor General is hereby reversed." [21] In *La Fuerza, Inc. v. Court of Appeals*, [22] this Court, through the then Chief Justice Concepcion, stressed the doctrine that the decisive factor is the delivery of the thing sold. So that it is placed in the control and possession of the vendee. This was what happened in this case. The liberality with which this Court views the stage of perfection in a contract of sale is likewise manifest in *Republic v. Lichauco*, [23] where this Court, with Justice Zaldivar as ponente, held that there could be a valid and binding agreement providing for sale of property yet to be adjudicated by the court. Only thus may the law be infused with the highest concept of equity and fair dealing. As it was in those cases, so it should be now.

5. It is understandable for petitioner as custodian of public funds to see to it that only valid and legitimate claims should be honored. In that light, the appeal from the lower court decision cannot be viewed unfavorably. Nonetheless, when it is remembered that the adverse effects of the failure to pay for the tobacco would be a number of small planters, there is warrant for the view that no failure in the performance of public duty could be imputed to any official if on the facts as found, there being the required delivery and there being no question yet as to the fire having been the cause of loss, the payments could have been made after its investigation. Only thus, to follow the *Smith Bell* decision, would there be an avoidance of injustice and conformity with "the law and equity of the case."

WHEREFORE, the decision of the lower court of December 28, 1970 is affirmed. No costs.

Castro, C.J., Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

Barredo, J., concurs. He believes private respondents had already done what was incumbent upon them when the loss by fire occurred.

Teehankee, and Makasiar, JJ., concurs in the dissenting opinion of J. Aquino.

Aquino, J., dissents in a separate opinion.

Antonio, J., no part.

[1] The private respondents are the Eastern Vigan VTPA, Inc., San Nicolas Facoma, Inc., Ilocos Sur Tobacco Industries Corp., Tagudin Facoma, Inc., San Juan Tobacco Planters, Inc., Sta. Monica Tobacco Planters Assn., Norfex-Villaviciosa, Boundary VTPA, Badoc Tobacco Planters, Inc., Luzon Producers Corp., Balaoan Facoma, Inc., Bangued Norfex, Bangued Tobacco Prod. Assn., Aringay Facoma, Inc., Southwestern San Quintin Tobacco Planters, Inc., Bangued Facoma, Inc., Central Reliance Tobacco Farmers Corp., Lidlidda VTPA, Inc., Filipino Agricultural Producers, Inc., La Union Agricultural Development Corp., United San Ildefonso VTG Association, Inc., Asingan Facoma, Inc., and Allied Tobacco Planters, Inc.

[2] Two of the most recent cases as to a review by direct appeal to this Tribunal foreclosing review of facts found by the lower court are *Demasiado v. Velasco*, L-27844, May 10, 1976, 71 SCRA 105, per Justice Barredo, and

Arguelles v. Timbancaya, L-29052, July 30, 1976, 72 SCRA 193, per Justice Antonio.

[3] Decision, Annex A to Petition, 1.

[4] Ibid, 1-2.

[5] Ibid, 2-3.

[6] Ibid, 3-4.

[7] Ibid, 4.

[8] Ibid, 5.

[9] Ibid, 6-7.

[10] Ibid, 7-8.

[11] Ibid, 8.

[12] Ibid, 11-12.

[13] Brief for Petitioner, 5.

[14] Decision, Annex A to Petition, 3-4.

[15] Brief for Petitioner, 5.

[16] 1 Phil. 490.

[17] Article 1475 of the Civil Code. Its second paragraph of Article 1475 reads as follows: "From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts."

[18] Cf. Barretto v. Santa Marina, 26 Phil. 200 (1913); Cruzado v. Bustos and Escaler, 34 Phil. 17 (1916); Ocejo, Perez and Co. v. International Banking Corp., 37 Phil. 631 (1918); Warner, Barnes and Co. v. Inza, 43 Phil. 505 (1922); Earnshaw Docks v. Collector of Internal Revenue, 54 Phil. 696 (1930); Chua Ngo v. Universal Trading Co., Inc., 87 Phil. 331 (1950); Soriano v. Latoño, 87 Phil. 757 (1950).

[19] 118 Phil. 417.

[20] Ibid, 423.

[21] Ibid, 424.

[22] L-24069, June 28, 1968, 23 SCRA 1217.

[23] L-21436, August 18, 1972, 46 SCRA 305.

DISSENTING OPINION

AQUINO, J.:

I dissent. The trial court erred in ordering the Philippine Virginia Tobacco Administration (PVRTA) to pay the sixteen respondent corporations (plaintiffs below) the total sum of P1,036,717.09, plus legal rate of interest from August 1, 1963 and 10% of the principal obligation as attorney's fees.

That judgment is erroneous because the sale of plaintiffs' tobacco to defendant (now petitioner) PVTA was not consummated. It was not consummated because there was no tradition or delivery of the tobacco to the PVTA. The tobacco was lost when the redrying plant of the Central Cooperative Exchange (CCE) at Agoo, La Union, where the tobacco was delivered, was burned on July 24, 1963.

At the time the tobacco was burned, the ownership thereof had not yet passed to the PVTA. The tobacco was still owned by the sixteen plaintiffs or sellers. The CCE was merely an agent of the PVTA. Even as agent, it had not yet accepted delivery of the tobacco before it was lost during the fire. There was no acceptance of delivery because the tobacco, at the time it was lost, had not yet been properly inspected, graded and weighed.

Paragraph 9 of the contract dated February 22, 1963 for procuring, redrying and servicing of Virginia tobacco, executed between the PVTA and the CCE, provides that the CCE's responsibility, as agent of the PVTA, begins from the moment the tobacco has been delivered, received and accepted from the trading entities and the same has been properly graded and weighed.

Those requirements had not yet been satisfied at the time the tobacco was lost in the CCE's redrying plant.

Inasmuch as the PVTA did not become the owner of the lost tobacco and as the sixteen trading entities were still the owners thereof, the loss should be borne by them, not by the PVTA. *Res perit domino*. Hence, the PVTA was not obligated to pay for the tobacco (*Roman vs. Grimalt*, 6 Phil. 96; *Yu Tek & Co. vs. Gonzalez*, 29 Phil. 384).

Plaintiffs' cause of action was really against the CCE. They did not appeal from the lower court's judgment absolving the CCE.

Under the contract between the PVTA and the CCE, the latter was supposed to advance to the trading entities the payment for the tobacco delivered to the CCE (par. 2). The PVTA would then reimburse the CCE for its advances (par. 22). No such advances were made by the CCE, a circumstance which may signify that the sale was not consummated.

The trial court found that the tobacco shipments delivered to the CCE "were unloaded and awaiting inspection and grading when they were burned on July 24, 1963", that the tobacco shipments of twenty-four trading entities were not entered in the CCE lists or ledgers because they had not yet been inspected nor were their values computed before they were burned, and that inspection or acceptance of tobacco shipments was suspended (p. 18, Decision, Appendix of petitioner's brief).

The following excerpts from the brief of the Solicitor General for the PVTA reinforce the view that the trial court's judgment should be reversed:

"At the hearing (the reception of evidence was delegated to a commissioner named by the court) the documentary and testimonial evidence adduced by plaintiffs failed to show that the shipments of tobacco were duly accepted, weighed and graded by the PVTA or its authorized representative, before the fire that gutted the premises of the CCE redrying plant at Agoo, La Union.

"On December 28, 1970, the lower court notified the parties of the filing of the Commissioner's Report and granted them a period of ten (10) days therefrom within which to file their comment thereon.

"However, without waiting for the respondents tobacco trading entities' comments, as indeed, none was

submitted and on the part of petitioner Assistant Government Corporate Counsel Romualdo Valera wrote in his own handwriting and under his sole signature, at the reverse side of the order that he had no objection to the Commissioner's Report, even though said counsel had absolutely nothing to do with this case as he was not the one assigned to handle the case, but on December 29, 1970, the lower court rendered decision ruling that the tobaccos in question were deemed delivered to petitioner PVTA, and, therefore, PVTA is liable to pay for the value of the said tobaccos shipped to the CCE redrying plant at Agoo, La Union, even though they had not been weighed and graded, and that the PVTA should bear the loss when the tobaccos were burned before its inspection, grading and weighing.

"xxx xxx xxx

"It may be conceded, for purposes of this appeal, that plaintiffs brought the tobacco shipments in question to the CCE redrying plant at Agoo, La Union, in 1963, to be sold to the PVTA, thru the CCE and that the same were unloaded and awaiting inspection, grading and weighing, when they were burned on July 24, 1963.

"The question that arises is whether the PVTA is liable to pay therefor and bear the loss considering that the said tobacco shipments were still to be inspected, graded, and weighed to determine the class and compensation therefor. In other words, were the tobaccos legally delivered to and accepted by the PVTA?

"It is well to ponder that the transaction involved herein is one of oral sale of locally grown Virginia leaf tobacco by plaintiffs -- herein respondents -- to the PVTA, thru the CCE.

"In the law of sale, the ownership of the things sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in articles 1497 to 1501, or in any other manner signifying an agreement that the possession is transferred from the vendor to the vendee (Art. 1496, Civil Code). The thing sold shall be understood as delivered when it is placed in the control and possession of the vendee (Art. 1497, Civil Code).

"The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price (Art. 1475, Civil Code).

"Thus, the question is whether at the moment the tobacco shipments in question were brought to the CCE redrying plant at Agoo, La Union, for sale to the PVTA, there was meeting of the mind to perfect the sale even before the tobaccos were inspected, graded, and weighed to determine the price to be paid therefor.

"The tobacco trading process is peculiar to this industry. As involved herein, the sales process was to undergo several stages, the last of which was the grading and weighing at the ramps after the tobaccos were 'delivered' (brought would be the more appropriate word) thereat for redrying at the CCE redrying plant.

"Thus, the contract of procuring, redrying, and servicing between the PVTA and the CCE, under which the

tobaccos in question were to be procured for the PVTA provided among others, that:

'9. The CORPORATION's responsibility begins from the moment the tobacco has been delivered, received and accepted from the trading entities and the same has been properly graded and weighed;' (par. 9, Annex A of second amended complaint, Annex B, Petition).

"Accordingly, the CCE never became obligated to the plaintiff trading entities because the tobaccos in question were burned before the same were graded and weighed.

"Consequently, the PVTA cannot be liable to pay for the burned tobaccos never legally deemed delivered to its trading arm, the CCE, much less considered sold to the PVTA.

"Viewed thus, the conclusion, is inescapable that the tobacco shipments brought to the redrying plant to be inspected, graded, and weighed, are considered not delivered and sold, in legal contemplation, until after grading and weighing where the 'meeting of minds' takes place because the price or consideration is determined by the grade and weight thereof. And without agreement as to price, the sale is not perfected.

"It is worth emphasizing that before the tobacco shipments were graded and weighed, they remained properties of the respondent trading entities, subject to their control and possession, and at their risk; consequently, respondents shall bear the loss which occurred prior to the grading and weighing of the tobaccos.

"Thus, it is inescapable conclusion that respondents should bear the loss of the tobacco shipments in question which were burned before actual or constructive delivery and acceptance thereof by petitioner, as indeed, evidence of delivery is sorely wanting (Santiago PVTA, et al. vs. PVTA, L-26292, February 18, 1970, 91 SCRA 528)."

I vote for the reversal of the lower court's judgment and the dismissal of the complaint as to the PVTA.

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