

AMADEO MATUTE, PLAINTIFF AND APPELLANT, VS. CHEONG BOO, DEFENDANT AND APPELLANT.*G.R. No. 11109. January 07, 1918*

Ponente: STREET, J.

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Upon January 14, 1915, a contract was made between the plaintiff, Amadeo Matute, a resident of Davao, Philippine Islands, and the defendant Cheong Boo, a resident of Zamboanga, Province of Zamboanga, Philippine Islands, by which it was stipulated that the former should deliver and the latter should receive, within the month of February of the same year, a quantity of more than 300 and less than 500 piculs of mastic (almaciga) at the price of P8.50 per picul. The plaintiff Matute performed his part of the contract by collecting and transporting to the city of Zamboanga some 500 piculs of the resin within the time stated in the contract. Upon the arrival of this shipment at Zamboanga, on February 22, 1915, the plaintiff notified the defendant, but the latter refused to accept delivery. The plaintiff thereupon stored the almaciga; and upon February 27, 1915, he instituted this action in the Court of First Instance of the Province of Zamboanga, praying that the court should enter judgment in his favor requiring the defendant to fulfill the contract and accept the almaciga in question and furthermore should enter judgment for the price of the almaciga, plus damages and costs. At the hearing the court found that the contract was made, as alleged; that the almaciga was of merchantable quality, and that the defendant had violated his contract in refusing to receive it. Judgment was accordingly given in favor of the plaintiff and against the defendant in the following terms:

"Let judgment be entered in favor of the plaintiff and against the defendant, requiring the latter to comply with the terms of the contract set forth in the complaint, that is to say; to receive and accept the five hundred piculs of almaciga offered by the plaintiff, and to pay to the plaintiff the sum of P4,861.17, together with interest thereon at the legal rate from the date of the filing of the complaint, and costs of this action. In case the defendant shall refuse accept said almaciga and pay to the plaintiff the amount of this judgment for the period of thirty days, the plaintiff will sell said almaciga for the highest price possible, crediting the amount received upon this judgment."

From this judgment both parties appealed; but the defendant has desisted from his appeal and has also failed to make reply to the assignment of errors filed in this court by the plaintiff, as appellant. The cause is therefore here considered only upon the appeal of the latter.

There is no question as to the propriety of allowing judgment to be entered for the plaintiff in the sum of P4,250, this being the contract price of 500 piculs of almaciga at P8.50 per picul. The same is true of the amount allowed as the cost of freight from the port of Monserrat to Zamboanga (P112.22) and the amount allowed for forestry taxes (P318.75), as the contract provided that both of these items of expense should be paid by the purchaser. The principal controversy is over the items, which are claimed by the plaintiff as damages incurred by him by reason of the failure of the defendant to accept the almaciga when tendered.

With respect to these damages it appears that, upon the refusal of the defendant to accept the almaciga, the

plaintiff at a cost of P3.60 placed two watchmen to guard it during two days while it remained on the pier at Zamboanga. He then expended P39.20 for carting it from the pier to a bodega where he placed it in storage. From that date until July 15, 1915—just prior to the trial of the cause in the Court of First Instance—he expended the sum of P678.50 as warehouse charges. At the hearing the court allowed the item of P39.20, the cost of moving the almaciga to the bodega, but allowed only P141 in respect of the charges for storage. In explanation of this, the court said:

"In the matter of damages we are of the opinion that the item of storage should not be allowed in full; that the Plaintiff upon the refusal of the defendant to accept the almaciga should have disposed of it for the best price he could get within a reasonable time, holding the defendant responsible for the deficiency in price which resulted. We find that thirty days would have been reasonable for this purpose and therefore fix the item of storage at P141."

The plaintiff insists that this is an action to enforce performance of the contract, and that having made his election to enforce performance under article 1124 of the Civil Code and article 332 of the Code of Commerce, it was incumbent upon him for his own protection to preserve the almaciga which is the subject of the contract, in order to abide the decision of the court; and he further insists that the defendant is liable for the expenditures thereby occasioned.

We think that the plaintiff is right in this contention. The provisions of law above cited recognize the right of the vendor to elect between enforcing compliance with the contract of sale and a rescission thereof; and in both cases he is entitled to full damages. But our attention is invited to the fact that article 332 of the Code of Commerce requires the seller, in case he elects to enforce compliance, to make a judicial deposit of the goods, which formerly had to be effected in conformity with the provisions of Spanish procedure in force in the Islands (*Ley de Enjuiciamiento Civil*, articles 2040-2048); and as our Code of Civil Procedure makes no special provision for a judicial deposit in a case of this kind, it is argued that the seller is thereby deprived of his election to enforce compliance with the contract, or that if he does so elect, he should be limited to the recovery of such damages as he might have recovered if he had elected from the first merely to rescind the contract and sue for damages for the breach. Such would seem to be the theory underlying the decision of the Court of First Instance.

We do not concur in this view. The right of claiming full compliance is a substantial right, and it is not, in our opinion, conditioned upon the mode of procedure prescribed with reference to giving effect to that right: Conceding that the provisions relating to the judicial deposit under the Spanish procedure are no longer in vogue here, it by no means follows that the substantial right has been thereby abolished or impaired. The decision of the Court of First Instance was therefore erroneous in declaring that the plaintiff should have sold the almaciga within a reasonable time, after the defendant refused to accept it, which period the court fixed at one month. In the second paragraph of article 1124 of the Civil Code it is said that the seller, after having elected to enforce compliance with the contract, may ask for rescission when performance becomes impossible. It follows that, having first made the election to enforce compliance, the plaintiff is bound by the election and cannot convert his action into an action for rescission unless performance becomes impossible. Therefore if the seller had sold this almaciga as the court declared he should have done, and at the hearing the court had decreed specific performance, the seller would have been unable to comply with that judgment.

But it is insisted that the effect of our holding is to expose purchasers to the danger of great and unreasonable loss as a possible result of the goods being kept in storage by the plaintiff at great expense and over a long period while the action to determine the rights of the parties is being contested in the courts; and it is said that when a judicial deposit was effected under the Spanish procedure, the purchaser had greater protection than where the goods remain in the custody of the seller or other extra-judicial depositary. The correct reply to this suggestion, in

our opinion, is this: A seller who institutes an action to compel the buyer to accept the merchandise which is the subject of the sale thereby places such merchandise at the disposal of the court and admits that he is himself holding the property for his adversary. By renouncing his own right in the property, and asking the court to compel the adverse party to accept it, the plaintiff may be said to constitute himself, for the time being, the agent or receiver of the court. As a consequence, it would undoubtedly be competent and proper for the court, upon the application of either party, to order that the property be taken into the custody of an officer of the court or of a receiver to be specially appointed by it. We also submit that the court would likewise have authority in such case to make an order for the sale of the property and the payment of the proceeds into court, if such course should appear to be advisable for the reasonable protection of any or all the parties concerned. The exercise of this power would be especially important if the goods should be of a perishable nature. Courts of equity have always freely exercised analogous powers through their own officers or special receivers.

"When there is any particular fund, especially a trust fund, in litigation, or any specific chose in action, chattel, or any other article of personal property, the custody or ownership of which is in dispute, the party thereunto entitled, ordinarily the plaintiff may move the court to require the party in possession to pay or deliver it into court, subject to the future orders of the court." (Street, Fed. Eq. Prac, sec. 1322.)

The particular problem now under consideration would rarely present itself to an American or English court, as by the principles of the common law the seller is always limited to an action for damages for breach of contract upon the failure of a buyer—who has not acquired title—to accept delivery, and the seller is not allowed the option of enforcing specific performance of a commercial contract. But under the procedure followed in the American and English courts, the problem here encountered appears capable of easy solution. Upon principle there is no difference between the power of a court of equity to deal with a chattel which is the subject of litigation and its power to deal with a fund, or money, which is the subject of litigation. In respect to the power of the court to control and dispose of a fund which is the subject of litigation, it has been said by an American judge that "there was never a time when a court of equity did not have complete control of the question of the payment of money into court, or the payment of money out of it—quite as complete control as the courts of admiralty have." (Caesar vs. Capell, 83 Fed., 403.) In the case where this language was used, Hammond, J., the learned author of the opinion, adverted to the circumstance that under the English equity practice it was long ago established that if a defendant came in and by his answer admitted that a certain sum of money was due to the plaintiff, the court might, upon the application of the plaintiff, require the defendant to pay that which was admitted to be due into court, upon the bare admissions of the answer, whether by way of security for the final judgment, or by way of immediate payment to the plaintiff, under such terms and conditions as the court might prescribe. And the court would, according to the circumstances of the case, hold the money as security or immediately pay it out, upon the application of the proper party. The equitable power of the court in this respect is somewhat similar to that sometimes exercised by the court over a plaintiff seeking equitable relief as a condition upon which relief is granted. Thus, if a plaintiff appears in court seeking to have a contract or conveyance set aside for usury or for other defect, or illegality, the practice of requiring him to do equity as a condition to obtaining such relief is familiar. Proceeding thence to a consideration of the situation where the plaintiff voluntarily pay] money into the clerk's office without any order of the court, it was observed by the court in the opinion above cited, that the power of the court to deal with that fund as the equities of the situation demanded could not be questioned; and the general principle was laid down that—

"The court, having once got hold of the money, either by the voluntary payment of the defendant into court, or by an enforced payment such as has been suggested, will hold onto it, and deal with it as the right and justice of the case demands, and will exercise the widest and most complete discretion, unhesitatingly, for the purpose of doing justice between the parties * * *."

It is one of the common-place conceptions of our judicial practice that where the court has jurisdiction over individuals who are interested in any property which is the subject of litigation it may through them exercise jurisdiction over the property itself. We conclude that in a case like this, where the seller of merchandise seeks to enforce performance against the buyer, there is nothing to prevent the court from assuming jurisdiction over the property, if necessary, and authorizing or directing its sale upon the application of one of the parties. It is not to be supposed that the seller would, from any frivolous or malicious motive, oppose the reasonable application of the buyer to have the property sold; but if the application should be denied because of any such objection from the seller, the latter would undoubtedly find in the end that, in making such objection, he had not consulted his own best interests. If a sale should be thus effected pending the litigation, the seller would of course be released from the obligation to deliver the specific merchandise after final judgment.

In our opinion the correct practice in a case of this kind now is for the seller, upon electing to enforce compliance against the purchaser, to indicate in his complaint his readiness to surrender the goods into the custody of the court and to request the court, if it should deem such course to be advisable, to direct that the goods be delivered to its own officer or to a receiver to be appointed for the purpose. In this way the court is placed in a position to act at once, if the situation should so require, and the adversary party is also given a fair opportunity to protect his own interests. This course would seem to furnish the most convenient method of adjusting our present practice to those situations where the Code of Commerce or the Civil Code requires a judicial deposit to be effected. The complaint in such a case would therefore appear to be defective and demurrable if it fails to contain at least an offer on the part of the plaintiff to surrender the property into legal custody. The complaint in the case now before us contains no such suggestion; but no demurrer was interposed in the court below, or motion made by the defendant to dismiss the action on that ground. Under these circumstances we are of the opinion that, as the defect relates solely to procedure and is therefore a matter of form, it should be ignored by this court.

The net result of the abrogation of the provisions of the Ley de Enjuiciamiento Civil relative to the making of judicial deposits would therefore appear to be that the courts have been relieved from the necessity of following those precise provisions and are therefore now free in such cases to give effect to the requirements of law in any manner consistent with the fundamental principles governing the exercise of judicial power.

As to the right of the plaintiff to recover all of the expenses incident to the storage of the almaciga pending this litigation, it is to be observed that under the last paragraph of section 332 of the Code of Commerce it is expressly stated that the expenses incident to the deposit of the goods shall be charged to the delinquent party. This provision of course contemplates the case where a judicial deposit is effected in accordance with the provisions of the Spanish Code of Civil Procedure, and it may be said that this provision has no application in the case of extrajudicial deposit. These expenses are, however, a necessary consequence of the refusal of the buyer to accept the goods in accordance with his contract, and are therefore in any event recoverable as general damages under article 1124 of the Civil Code.

It will be noted that the contract in question calls for the delivery of a quantity of almaciga of less than 500 piculs. This would justify the delivery of a quantity fractionally below that amount. It appears that the quantity actually tendered was 500 piculs. As the law takes no account of trifles (*de minimis non curat lex*), it is obvious that the discrepancy may be disregarded; and the delivery of 500 piculs is a sufficient compliance with the contract to deliver an amount less than 500.

From what has been said it follows that the plaintiff is entitled to recover P678.50, being the full amount expended by him upon account of storage prior to July 15, 1915, instead of the amount of P141 allowed by the court. He is also entitled to be reimbursed for all reasonable expenditures made upon the same account subsequent to July 15 1915, up to the time when the almaciga shall be delivered by him to the purchaser in pursuance of the

judgment of the court, or until the almaciga shall be sold if a sale should become necessary. The plaintiff is also entitled to recover the item of P3.60, being the expense incurred in guarding the property while upon the pier at Zamboanga. No allowance will be made upon account of certain other items of damage claimed by the plaintiff, such as the expenses of personal transportation of himself from Monserrat to Zamboanga, interest paid out upon the invested capital, and loss incident to the drying of the almaciga.

The judgment rendered in the court below must therefore be modified to conform to the following tenor: The defendant shall receive and accept the 500 piculs of almaciga tendered by the plaintiff; and judgment is rendered against the defendant in favor of the plaintiff for the sum of P5,402.27, plus interests at the lawful rate to be calculated upon P4,864.77 from February 27, 1915, and upon P537.50 from July 15, 1915, together with the costs of first instance. In case the defendant shall refuse to accept said almaciga and pay to the plaintiff the amount of this judgment within thirty days, together with reasonable costs of storage paid by the plaintiff from July 15, 1915, to the date of performance, the plaintiff shall sell said almaciga for the highest price possible crediting the amount received, less cost of storage since July 15, 1915, upon this judgment.

Modified and affirmed, without costs. So ordered.

Arellano, C. J., Torres, Carson, Araullo, Malcolm, and Avanceña, JJ., concur.

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