

LAMBERTO SONGCO, PLAINTIFF AND APPELLEE, VS. GEORGE C. SELLNER, DEFENDANT AND APPELLANT.*G.R. No. 11513. December 04, 1917*

Ponente: STREET, J.

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In December, 1915, the defendant, George C. Sellner, was the owner of a farm at Floridablanca, Pampanga, which was contiguous to a farm owned by the plaintiff Lamberto Songco. Both properties had a considerable quantity of sugar cane ready to be cut. At Dinalupijan, a short distance away, was located a sugar central, and Sellner desired to mill his cane at this central. One obstacle was that the owners of the central were not sure they could mill his cane and would not promise to take it. Sellner, however, learning that the central was going to mill Songco's cane, conceived the idea of buying the cane of the latter, expecting to run his own cane in at the same time the other should be milled. Another motive which evidently operated upon the mind of Sellner was the desire to get a right of way over Songco's land for conveying his own sugar to the central. Accordingly he bought Songco's cane as it stood in the fields for the agreed sum of P12,000 and executed therefor three promissory notes of P4,000 each. Two of these notes were paid; and the present action was instituted to recover upon the third. From a judgment rendered in favor of the plaintiff, the defendant has appealed.

The note, upon which the action was brought, was exhibited with the complaint. The answer of the defendant was made under oath, and contained a general denial of all the allegations of the complaint. The answer also contained the allegation, asserted by way of special defense, that the promissory note in question was obtained from the defendant by means of certain false and fraudulent representations therein specified. The note was admitted in evidence by the court; and error is here assigned upon this action, on the ground that the genuineness and due execution of the note was not proved. There is nothing in this contention for several reasons. In the first place a general denial of a complaint does not raise a question as to the genuineness or due execution of a written instrument. Under section 103 of the Code of Civil Procedure it is necessary that the genuineness and due execution of the instrument shall be specifically denied before an issue is raised upon this point. This means that the defendant must declare under oath that he did not sign the document or that it is otherwise false or fabricated. Neither does the statement of the answer to the effect that the instrument was procured by fraudulent representation raise any issue as to its genuineness or due execution. On the contrary such a plea is an admission both of the genuineness and due execution thereof, since it seeks to avoid the instrument upon a ground not affecting either. Furthermore, in this particular case the fourth paragraph of the answer expressly admits the execution of the instrument by the defendant.

The principal defense here urged relates to a false representation which, it is claimed, was made by the plaintiff Songco with respect to the quantity of uncut cane standing in the fields at the time the defendant Sellner became the purchaser thereof. Upon this point it is proved that Songco estimated that this cane would produce 3,000 piculs of sugar and that Sellner bought the crop believing this estimate to be substantially correct. As the crop turned out it produced 2,017 piculs, gross, and after the toll for milling was deducted the net left to Sellner was

very much less. It appears that in the course of the negotiations Sellner requested Songco to guarantee the quantity which the latter claimed to be in the fields but he would not do so. He, however, repeated that he was sure the fields contained the quantity estimated by him. Some evidence was introduced tending to show that the disparity between Songco's estimate and the quantity actually obtained would have been less if the cutting and hauling of the cane had been more expeditiously conducted. We do not think there is much in this; and even making allowance for weight unnecessarily lost, the harvest fell far short of the amount estimated by Songco. We think it is fairly shown by the evidence that Songco knew at the time he made the representation in question that he was greatly exaggerating the probable produce of his fields, and it is impossible to believe that his estimate honestly reflected his true opinion. He knew what these same fields had been producing over a long period of years; and he knew that, judging from the customary yield, the harvest of this year should fall far below the amount stated.

Notwithstanding the fact that Songco's statement as to the probable output of his crop was disingenuous and uncandid, we nevertheless think that Sellner was bound and that he must pay the price stipulated. The representation in question can only be considered matter of opinion as the cane was still standing in the field, and the quantity of sugar it would produce could not be known with certainty until it should be harvested and milled. Undoubtedly Songco had better experience and better information on which to form an opinion on this question than Sellner. Nevertheless the latter could judge with his own eyes as to the character of the cane, and it is shown that he measured the fields and ascertained that they contained 96½ hectares.

It is of course elementary that a misrepresentation upon a mere matter of opinion is not an actionable deceit, nor is it a sufficient ground for avoiding a contract as fraudulent. We are aware that statements may be found in the books to the effect that there is a difference between giving an honest opinion and making a false representation as to what one's real opinion is. We do not think, however, that this is a case where any such distinction should be drawn.

The law allows considerable latitude to seller's statements, or dealer's talk; and experience teaches that it is exceedingly risky to accept it at its face value. The refusal of the seller to warrant his estimate should have admonished the purchaser that that estimate was put forth as a mere opinion; and we will not now hold the seller to a liability equal to that which would have been created by a warranty, if one had been given.

Assertions concerning the property which is the subject of a contract of sale, or in regard to its qualities and characteristics, are the usual and ordinary means used by sellers to obtain a high price and are always understood as affording to buyers no ground for omitting to make inquiries. A man who relies upon such an affirmation made by a person whose interest might so readily prompt him to exaggerate the value of his property does so at his peril, and must take the consequences of his own imprudence.

The principles enunciated above are fully supported by the weight of judicial authority. In a case where the owners of certain logs represented to their vendee that the logs would produce a greater per cent of superior lumber than was actually realized, but refused to warrant their quality and required the vendee to examine for himself before making the contract, it was held that the vendee could not avoid the contract. (*Fauntleroy vs. Wilcox*, 80 111., 477.) In *Williamson vs. Holt* (147 N. C., 515; 17 L. R. A. [N. S.], 240), it appeared that the defendant had bought an ice plant with the knowledge that its operation had been abandoned because the output did not equal its capacity. He had full opportunity to investigate its condition. It was held that he could not avoid paying the purchase price because the vendor stated that, with some repairs, it would turn out about a certain amount per day. In *Poland vs. Brownell* (131 Mass., 138), where a man who bought a stock of goods had ample opportunity to examine and investigate, it was held that he could not rely on the seller's misrepresentations as to the value of the goods or the extent of the business. It would have been different if the seller had fraudulently induced him to forbear inquiries or examination which he would otherwise have made.

It is not every false representation relating to the subject matter of a contract which will render it void. It must be as to matters of fact substantially affecting the buyer's interest, not as to matters of opinion, judgment, probability, or expectation. (Long vs. Woodman, 58 Me., 52; Hazard vs. Irwin, 18 Pick. [Mass.], 95; Gordon vs. Parmelee, 2 Allen [Mass.], 212; Williams vs. McFadden, 23 Fla., 143, 11 Am. St. Rep., 345.) When the purchaser undertakes to make an investigation of his own, and the seller does nothing to prevent this investigation from being as full as he chooses to make it, the purchaser cannot afterwards allege that the seller made misrepresentations. (National Cash Register Co. vs. Townsend, 137 N. C., 652, 70 L. R. A., 349; Williamson vs. Holt, 147 N. C., 515.)

We are aware that where one party to a contract, having special or expert knowledge, takes advantage of the ignorance of another to impose upon him, the false representation may afford ground for relief, though otherwise the injured party would be bound. But we do not think that the fact that Songco was an experienced farmer, while Sellner was, as he claims, a mere novice in the business, brings this case within that exception.

An incident of this action was that the plaintiffs sued out an attachment against the defendant, at the time of the institution of the suit, upon the ground that he was disposing of his property in fraud of his creditors. This charge was completely refuted by proof showing that the defendant is a man of large resources and had not attempted to convey away his property as alleged. The court below therefore found that this attachment had been wrongfully sued out, and awarded damages to the defendant equivalent to the amount actually paid out by him in procuring the dissolution of the attachment. No appeal was taken from this action of the court by the plaintiff; but the defendant assigns error to the action of the court in refusing to award to him further damages for the injury done to his credit. In this connection he shows that one of his creditors, being apprised of the fact that the defendant had been made the subject of an attachment, withheld further credit and forced him to sell a large quantity of sugar at a price much lower than he would have received if he could have carried it a few weeks longer. We think the court below committed no error in refusing to award damages upon this ground, as such damages were remote and speculative. It could hardly be foreseen as a probable consequence of the suing out of this attachment that the hands of the creditors would come down upon their unfortunate client with such disastrous results; and the plaintiff certainly cannot be held accountable for the complications of the defendant's affairs which made possible the damage which in fact resulted. The court below also refused to award punitive damages claimed by the plaintiff on the ground that the attachment was maliciously sued out. The action of the court in this respect will not be here disturbed.

From what has been said it follows that the judgment of the court below must be affirmed, with costs against the appellant. So ordered.

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

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