

ARTHUR F. ALLEN, PLAINTIFF AND APPELLEE, VS. THE PROVINCE OF TAYABAS, DEFENDANT AND APPELLANT.*G.R. No. 12283. July 25, 1918*

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12283/>**MALCOLM, J.:**

On April 18, 1914, the Province of Tayabas, represented by the Director of Public Works, and Arthur F. Allen, contractor, entered into a contract whereby the contractor agreed to construct five reenforced concrete bridges for P39,200. This contract was in the usual form. One provision was that the bridges were to be constructed "in accordance with the said advertisements, instructions to bidders, general conditions, plans, specifications, proposal, and this agreement." Other paragraphs of the contract concerned the method and rate of payment for extras.

Four of the bridges were accepted by the Government and paid for. The dispute between the parties arose as to the fifth bridge, No. 53.3 and as to certain extras. As to this bridge, the Province of Tayabas paid to the contractor P4,360 on account of the contract price thereof, but refused to pay the balance of P2,840, because plaintiff had deviated from the specifications and because the work was defective. The province further refused to pay for certain extras. To recover the balance upon the contract was the purpose of the contractor in bringing action for ^9,685 (amended complaint), alleged to be due him by the Province of Tayabas. The common averments of the six causes of action were: (1) Residence; (2) the contract; (3) the faithful compliance "with all the terms and conditions of the said contract" on the part of the contractor, and completion and delivery of the bridges in question; (4) refusal of defendant to pay plaintiff the balance due for bridge No. 53.3, for certain extras, and as damages, although frequently requested to do so. Defendant demurred to the complaint on the ground that it did not state facts sufficient to constitute a cause of action, because: (a) The approval of the Governor-General to the contract had not been given as contemplated by section 2 of the Provincial Government Act (No. 83) ; and (b) the certificate for payment had not been accomplished by the Director of Public Works or the district engineer as provided by section 6, of Act No. 1401, as amended. The demurrer was overruled. Thereupon defendant answered, renewing as a special defense the grounds of the demurrer, alleging defective work on the part of the plaintiff, and admitting a total of P2,454.78, the amount certified by the Director of Public Works and the district engineer, as due the plaintiff. The trial court gave judgment for the plaintiff-contractor for P4,905, with legal interest from July 14, 1914, and costs. Defendant moved for a new trial, which was denied, duly excepted, and perfected a bill of exceptions to this court.

Appellant's assignments of error relate to the findings of fact and two main issues of law. We pass the facts for the moment, to discuss the legal questions.

The first contention of appellant is that the Province of Tayabas is not obligated to pay the contractor anything because the contract was not approved by the Governor-General. This position is absolutely untenable. The law in force when the contract was entered into and when the action was tried, section 2, Act No. 83, as amended by Act No. 1600, made the approval of the Governor-General a prerequisite only to the purchase and conveyance of real

estate by a province. The grammatical construction of the English text, which is controlling, makes this perfectly clear. Moreover, the law now in force (Administrative Code of 1917, section 2068) has removed any possibility of doubt and has at the same time revealed legislative intention, by placing the requirement for the Governor-General's approval of transfers of real estate by provinces in a section separate and distinct from the section of the Code giving the corporate powers of provinces.

The remaining legal issue merits more extended consideration. Appellant's contention is that the certificate by the district engineer and the Director of Public Works must be obtained before suit can be brought on a contract; that the findings of these officials are conclusive; and that the complaint must contain an averment to this effect. Appellee's reply is that neither the law nor the contract requires the submission to arbitration of disputes between the Government and the contractor, and that a mere administrative procedure incident to payment has been established.

Act No. 1401, as amended by Act No. 1752, was in force when this action was instituted. The same provisions are now found in slightly altered phraseology in sections 1917-1923 of the Administrative Code of 1917. The law gives a district engineer supervision over all contracts connected with public works, which exceed the estimated cost of ₱500. Section 6 of Act No. 1401, as amended by section 3 of Act No. 1752, reads:

"No payments, partial or final, shall be made on any public works without a certificate on the vouchers therefor to the effect that the work for which payment is contemplated has been accomplished, inspected, and accepted. Such certificate for work under the supervision of the district engineer shall be signed by him or his duly authorized representative. For work not under his supervision such certificate shall be signed by the provincial treasurer."

Section 1922 of the Administrative Code of 1917, reads:

"No payment, partial or final, shall be made on any public work of construction or repair without a certificate on the voucher therefor to the effect that the work for which payment is contemplated has been accomplished in accordance with the terms of the contract and has been duly inspected and accepted. Such certificate shall be signed by a duly authorized representative of the Director of Public Works having full knowledge of the facts in the case."

Contractors are of course bound to take notice of the provisions of the law relating to contracts. Statutory requirements cannot be departed from for the accommodation of either party to a contract. As a matter of fact, in the present instance, this obligation is intensified in so far as the contractor is concerned for the instructions to bidders contains this clause: "The contractor shall comply with all existing or future laws, the municipal or provincial building ordinances and regulations in so far as the same are binding upon or affect the parties hereto, the work, or those engaged thereon." (No. 23).

The instructions to bidders, a part of the contract, under the heading of "Payments," also contains the following:

"51. Payments will be made monthly, based upon the estimates of work satisfactorily completed and accepted by the Director during the preceding month. Upon such estimates the Province of Tayabas, P. I., shall pay to the contractor a sum equal to ninety (90) per cent thereof up to and until such time as the total work shall have been completed or the contract canceled, as herein provided.

"52. The acceptance of the work from time to time for the purpose of making partial payments, shall not be considered as a final acceptance of the work in question.

"53. Whenever this contract, in the opinion of the Director, shall be completely performed on the part of the contractor, the Director shall proceed promptly to measure the work and shall make out and certify the final

estimates and acceptance for the same. The province shall then, excepting for cause herein specified, pay to the contractor promptly after the execution of said certificate the remainder which shall be found due, excepting therefrom such sum or sums as may be lawfully retained under any of the provisions of this contract: Provided, That nothing herein contained shall be construed to waive the right of the Director, hereby reserved, to reject the whole or any portion of the aforesaid work should the same be found to have been constructed in violation of any of the conditions or covenants of this contract."

Both the law and the contract provide in mandatory language for a certificate of acceptance by the Director of Public Works or his representative before any payment shall be made on any public work for the Government.

Contracts of this character, giving into the hands of a third person or of the purchaser the power of acceptance or nonacceptance, are not unusual. Courts have frequently upheld them. The law regards the parties as competent to contract in this manner. Municipal and provincial contracts, being on the same footing as those of natural persons, may not be breached with impunity. That mutuality exists is undoubted. The party who deliberately enters into such an agreement, whether wisely or unwisely, must abide by it. The public corporation, in the absence of a showing of fraud or concealment, is estopped by the approval of its officer who is authorized to accept the work, from contesting the contractor's right to the contract price. (*City of Omaha vs. Hammond* [1876], 94 U. S., 98; *City Street Improvement Co. vs. City of Marysville*, [1909], 155 Cal., 419.) Likewise, the contractor must not only deliver a product with which the party of the second part ought to be satisfied, but with which he must be satisfied, or he is not bound to accept it. The rule is well settled that in the absence of fraud or of such gross mistake as would necessarily imply bad faith, contractors with public corporations are concluded by the decisions of engineers or like officers where the contract contains such a stipulation. The public corporation can rely on the provision in a contract that performance by the other party shall be approved by or satisfactory to it, or a particular officer, board or committee. (*Second Nat Bank vs. Pan-American Bridge Co.* [1910], 183 Fed., 391, reviewing Federal decisions; *Silby Manufg Co. vs. Town of Chico* [1885], 24 Fed., 893; 23 L. R. A. [1910], 322, Notes.)

A leading example is the case of *Sweeney vs. United States* ([1883], 109 U. S., 618), in which a contractor sought to recover from the United States the price of a wall built by him around the National Cemetery. The contract provided that the wall shall be received and become the property of the United States after the officer or civil engineer, to be designated by the Government to inspect the work, should certify that it was in all respects such as the contractor agreed to construct. The officer designated for that purpose refused to so certify on the ground that neither the material nor the workmanship was such as the contract required. As the officer exercised an honest judgment in making his inspection and as there was on his part neither fraud nor such grave mistake as implied bad faith, it was adjudged that the contractor had no cause of action on the contract against the United States.

The old common law rule required a strict or literal performance of contracts. The modern rule sanctions a substantial performance of contractual relations. The law now looks to the spirit of the contract and not to its letter. Even though a plaintiff is not entirely free from fault or omission, the courts will not turn him away if he has in good faith made substantial performance. Of course the terms of the contract may be such that the contractor has agreed that another shall have the absolute and unreviewable right to reject the article or work if not satisfied with it; in such case the contractor shall abide by his word. But when the terms, or the nature of the contract, or the circumstances are such as to make it doubtful, whether the contractor has made any such unwise agreement, the courts will ordinarily construe the contract as an "agreement to do the thing in such way as reasonably ought to satisfy the defendant." (*Parlin & Orendorff Co. vs. City of Greenville* [1904], 127 Fed., 55; *Swain vs. Seamens* [1870], 9 Wall., 254.) Thus, it has been held that the provision of a contract to perform work for the city requiring the contractor to obtain the certificate of the city engineer that the work has been done in accordance with the contract and the approval of such work by certain boards or committees, before he is entitled

to payment therefor, does not deprive him of the right to recover for the work, if it has been done in substantial conformity to the contract, because the city's officers arbitrarily or unreasonably refuse the certificate and approval called for. (*City of Elizabeth vs. Fitzgerald* [1902], 114 Fed., 547.)

Substantial performance and the unfounded refusal of the certificate of approval can be proved in various ways. Thus, acceptance and occupancy of the building by the owner amounts to an acknowledgement that the work has been performed substantially as required by the contract. (*Campbell and Go-Tauco vs. Behn, Meyer & Co.* [1904], 3 Phil., 590, affirmed on appeal to the United States Supreme Courts [1905], 200 U. S., 611.) Other circumstances, as partial payment, also show acquiescence on the part of the purchaser.

Appellee speaks of the provisions of the law and the portions of the contract in questions as possibly constituting an arbitration agreement. We deem these provisions to be more correctly labeled a condition precedent to the contractor's right to obtain payment; the condition is for the satisfaction of the Government. Nevertheless, considered as a species of arbitration, it was a convenient and proper method, duly agreed upon between the parties, to determine questions that would necessarily arise in the performance of the contract, about which men might honestly differ. It would be highly improper, for courts out of untoward jealousy to annul laws or agreements which seek to oust the courts of their jurisdiction. The New York theory of refusal to uphold such agreements, because of the opinion that they violate the spirit of the laws creating the courts, is hardly agreed to by more progressive jurisdictions. (See *U. S. Asphalt Refining Co. vs. Trinidad Lake Petroleum Co.* [1915], 222 Fed., 1006.) Unless the agreement is such as absolutely to close the doors of the courts against the parties, which agreement would be void (*Wahl and Wahl vs. Donaldson, Sims & Co.* [1903], 2 Phil., 301), courts will look with favor upon such amicable arrangements and will only with great reluctance interfere to anticipate or nullify the action of the arbitrator. For instance, a policy of fire insurance, contained a clause providing that in the event of a loss under the policy, unless the company shall deny all liability, as a condition precedent to the bringing of any suit by the insured upon the policy, the latter should first submit the question of liability and indemnity to arbitration. Such a condition, the Supreme Court of the Philippines held in *Chang vs. Royal Exchange Assurance Corporation of London* ([1907], 8 Phil., 399), is a valid one in law, and unless it be first complied with, no action can be brought.

What then are the remedies of the contractor? In the first place he has his administrative remedy, which is to complete the work substantially according to the contract and ask for the approval of the proper official. If such officer refuse or culpably neglect to perform a ministerial duty, such as making out the warrant, it is possible that mandamus will lie to coerce the officer. A stipulation requiring the approval of some one as a condition to a recovery by the contractor would not bar the party of his remedies by action at law. The right to redress in the courts where substantial compliance with the terms of a contract are set forth, and where the proof discloses the withholding of the certificate by an officer for insufficient reasons, should not be taken away by inference or anything short of a distinct agreement to waive it. (*Aetna Indemnity Co. vs. Waters* [1909], 110 Md., 673.) As a condition precedent to action by the courts, fraud or bad faith on the part of the responsible Government official, or arbitrary or unreasonable refusal of the certificate or approval must be alleged and proved.

To concentrate our facts and legal principles—we find the contractor supported by one expert insisting that the work and the materials actually conform to the specifications; and we have this as resolutely denied by competent Government engineers. We find substantial performance of the contract not proved to the satisfaction of the Government's technical adviser, but proved to the satisfaction of the trial court. Ordinarily, we would not review the facts unless the findings of the trial court are plainly and manifestly contrary to the proof. But here it was incumbent on the trial court to take about the same view of the findings of the Government's engineers as the appellate court would take of the findings of the trial court, or that any court would take of the findings of customs

boards, assessors, and the like. In order to set aside the action of the Director of Public Works or his authorized representative, fraud or bad faith on the part of these engineers must be established. Has this been proved? The judge in the course of his decision incidentally remarked: "It may as well be said here that there appears to have been a great deal of ill-feeling between plaintiff and the engineer in charge of this construction." Is this observation in connection with the testimony of the plaintiff and of one engineer sufficient to demonstrate fraud or bad faith? We think not. In other Words we believe that the contractor cannot maintain an action for the stipulated price when the engineer has in good faith, in pursuance of the contract, withheld his certificate. The decision of the responsible engineer cannot be subjected to the revisory power of the courts without doing violence to the terms of the contract and the law.

The Province of Tayabas, having accepted bridge No. 53.3, should of course pay the balance due, or P2,840. It should not be permitted to deduct the cost of the test of the bridge, P900.12, for this is a legal question for resolution by the courts, and the contract contains no such stipulation. (See *Ripley vs. U. S.* [1912], 223 U. S., 695.) But the findings of the Government engineers on all the other points covered by causes of action 2, 3, 4, 5, and 6 are deemed to be conclusive, fraud or bad faith not having been proved. Thus, we have P2,840, plus P269.10, plus P214.80, plus P6, plus P25, or P3,354.90 due plaintiff.

One point made by appellant is that the demurrer to the complaint was improperly overruled. An elementary principle of pleading heretofore approved by this court in *Government of Philippine Islands vs. Inchausti & Co.* ([1913], 24 Phil., 315) is brought to our notice, namely; "If the plaintiff's right of action depends upon a condition precedent he must allege and prove the fulfilment of the condition or a legal excuse for its nonfulfilment. And if he omits such allegation, his declaration, complaint, or petition, will be bad on demurrer." Undoubtedly, the complaint should have alleged either the performance of the condition precedent, approval by the Director of Public Works or the District Engineer, or a good and sufficient excuse for not obtaining it. It is possible that if sitting in first instance, we would so hold with defendant, but on appeal such a backward sweep would avail nothing but delay. Moreover, the complaint contains the general averment that the plaintiff fully and faithfully complied with all the terms and conditions of the said contract, while some months subsequent to the filing of the complaint but previous to the trial, the defendant accepted the bridge. A failure to allege a condition precedent or a legal reason for dispensing with it may be cured by the issues tendered by the answer and the proof. (*Donegan vs. Houston* [1907], 5 Cal. App., 626.)

To summarize, we are of opinion and so hold that the law makes the approval of the Governor-General a prerequisite only to the purchase or conveyance of real property by a province: that the provisions of the law and the form of the contract, usually followed in this jurisdiction, providing for the certificate of approval by the Director of Public Works or his representative, are in the nature of a condition precedent, which must be alleged and proved, and that this certificate is conclusive in the absence of a showing of fraud or bad faith.

Judgment shall be modified so that the plaintiff shall recover from the defendant P3,354.90 with legal interest thereon from July 14, 1914, until paid, without special finding as to costs in either instance. So ordered.

Torres, Johnson, and Fisher, JJ., concur.

Carson and Street, JJ., concur in the result.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.