

**BEHN, MEYER & CO. (LTD.), PLAINTIFF AND APPELLANT, VS.
TEODORO R. YANGCO, DEFENDANT AND APPELLEE.**

G.R. No. 13203. September 18, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

The first inquiry to be determined is what was the contract between the parties.

The memorandum agreement executed by the duly authorized representatives of the parties to this action reads:

"Contract No. 37,

Manila, 7 de marzo, de 1916.

"Confirmamos haber vendido a Bazar Siglo XX, 80 drums Caustic Soda 76 per cent 'Carabao' brand al precio de Dollar Gold Nine and 75/100 per 100-lbs., c. i. f. Manila, pagadero against delivery of documents. Embarque March, 1916.

"Comprador Bazar Siglo XX

"de Teodoro R. Yangco

"J. Siquia

"Vendedores

"Behn, Meyer & Co. (Ltd.)

"O. Lombeck."

This contract of sale can be analyzed into three component parts.

1. SUBJECT MATTER AND CONSIDERATION.

Facts.—The contract provided for "80 drums Caustic Soda 76 per cent 'Carabao' brand al precio de Dollar Gold Nine and 75/100 per 100-lbs."

Resorting to the circumstances surrounding the agreement as we are permitted to do, in pursuance of this provision, the merchandise was shipped from New York on the steamship Chinese Prince. The steamship was detained by the British authorities at Penang, and part of the cargo, including seventy-one drums of caustic soda, was removed. Defendant refused to accept delivery of the remaining nine drums of soda on the ground that the goods were in bad order. Defendant also refused the optional offer of the plaintiff, of waiting for the remainder of the shipment until its arrival, or of accepting the substitution of seventy-one drums of caustic soda of similar grade from plaintiff's stock. The plaintiff thereupon sold, for the account of the defendant, eighty drums of caustic soda from which there was realized the sum of P6,352.89. Deducting this sum from the selling price of P10,063.86, we have the amount claimed as damages for alleged breach of the contract.

Law.—It is sufficient to note that the specific merchandise was never tendered. The soda which the plaintiff offered to defendant was not of the "Carabao" brand, and the offer of drums of soda of another kind was not made within the time that a March shipment, according to another provision of the contract, would normally have been available.

2. PLACE OF DELIVERY.

Facts.—The contract provided for "c. i. f. Manila, pagadero against delivery of documents."

Law.—Determination of the place of delivery always resolves itself into a question of fact. If the contract be silent as to the person or mode by which the goods are to be sent, delivery by the vendor to a common carrier, in the usual and ordinary course of business, transfers the property to the vendee. A specification in a contract relative to the payment of freight can be taken to indicate the intention of the parties in regard to the place of delivery. If the buyer is to pay the freight, it is reasonable to suppose that he does so because the goods become his at the point of shipment. On the other hand, if the seller is to pay the freight, the inference is equally strong that the duty of the seller is to have the goods transported to their ultimate destination and that title to property does not pass until the goods have reached their destination. (See Williston on Sales, pp. 406-408.)

The letters "c. i. f." found in British contracts stand for costs, insurance, and freight. They signify that the price fixed covers not only the cost of the goods, but the expense of freight and insurance to be paid by the seller. (Ireland vs. Livingston, L. R., 5 H. L., 395.) Our instant contract, in addition to the letters "c. i. f.," has the word following, "Manila." Under such a contract, an Australian case is authority for the proposition that no inference is permissible that a seller was bound to deliver at the point of destination. (Bowden vs. Little, 4 Comm. [Australia], 1364.)

In mercantile contracts of American origin, the letters "F. O. B." standing for the words "Free on Board," are frequently used. The meaning is that the seller shall bear all expenses until the goods are delivered where they are to be "F. O. B." According as to whether the goods are to be delivered "F. O. B." at the point of shipment or at the point of destination determines the time when property passes.

Both of the terms "c. i. f." and "F. O. B." merely make rules of presumption which yield to proof of contrary intention. As Benjamin, in his work on Sales, well says: "The question, at last, is one of intent, to be ascertained by a consideration of all the circumstances." ("Benjamin on Sales," par. 329.) For instance, in a case of Philippine origin, appealed to the United States Supreme Court, it was held that the sale was complete on shipment, though the contract was for goods "F. O. B. Manila," the place of destination, the other terms of the contract showing the intention to transfer the property. (United States vs. R. P. Andrews & Co. [1907], 207 U. S., 229.)

With all due deference to the decision of the High Court of Australia, we believe that the word "Manila" in conjunction with the letters "c. i. f." must mean that the contract price, covering costs, insurance, and freight, signifies that delivery was to be made at Manila. If the plaintiff company had seriously thought that the place of delivery was New York and not Manila, it would, not have gone to the trouble of making fruitless attempts to substitute goods for the merchandise named in the contract, but would have permitted the entire loss of the shipment to fall upon the defendant. Under plaintiff's hypothesis, the defendant would have been the absolute owner of the specific soda confiscated at Penang and would have been indebted for the contract price of the same.

This view is corroborated by the facts. The goods were not shipped nor consigned from New York to plaintiff. The bill of lading was for goods received from Neuss Hesslein & Co. The documents evidencing said shipment and symbolizing the property were sent by Neuss Hesslein & Co. to the Bank of the Philippine Islands with a draft upon Behn, Meyer & Co. and with instructions to deliver the same, and thus transfer the property to Behn,

Meyer & Co. when and if Behn Meyer & Co. should pay the draft.

The place of delivery was Manila and plaintiff has not legally excused default in delivery of the specified merchandise at that place.

3. TIME OF DELIVERY.

Facts.—The contract provided for: "Embarque: March, 1916." The merchandise was in fact shipped from New York on the Steamship Chinese Prince on April 12, 1916.

Law.—The previous discussion makes a resolution of this point unprofitable, although the decision of the United States Supreme Court in *Norrington vs. Wright* ([1885], 115 U. S., 188) can be read with profit. Appellant's second and third assignments of error could, if necessary, be admitted, and still it could not recover.

THE CONTRACT.

To answer the inquiry with which we began this decision, the contract between the parties was for 80 drums of caustic soda, 76 per cent "Carabao" brand, at the price of \$9.75 per one hundred pounds, cost, insurance, and freight included, to be shipped during March, 1916, to be delivered at Manila and paid for on delivery of the documents.

PERFORMANCE.

In resume, we find that the plaintiff has not proved the performance on its part of the conditions precedent in the contract. The warranty—the material promise—of the seller to the buyer has not been complied with. The buyer may therefore rescind the contract of sale because of a breach in substantial particulars going to the essence of the contract. As contemplated by article 1451 of the Civil Code, the vendee can demand the fulfilment of the contract, and this being shown to be impossible, is relieved of his obligation. There thus being sufficient ground for rescission, the defendant is not liable.

The judgment of the trial court ordering that the plaintiff take nothing by its action, without special finding as to costs, is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Street, and Avanceña, JJ., concur.

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