

VICENTE PELAEZ AND EDUARDO DE RODA, PLAINTIFFS AND APPELLANTS, VS. DAVAO AGRICULTURAL & COMMERCIAL CO. INC., DEFENDANT AND APPELLEE.*G. R. No. 15245. October 30, 1920*

Ponente: AVANCEÑA, J.

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The plaintiffs, Vicente Pelaez and Teodoro Roda, are coowners in Cebu of a launch called Emma. On November 22, 1918, Mr. Isidro Vamenta, acting in the name of the defendant, Davao Agricultural Co., sent to Mr. Pelaez a telegram of the following tenor: "State if willing to sell launch twelve thousand pesos, eight thousand pesos to be paid in cash and the rest at one thousand a month." (Diga si conforme en dar lancha doce mil pesos pagado al contado ocho mil resto mil pesos cada mes.) On the 29th of the same month Mr. Roda sent to Mr. Vamenta the following answer: "Answer delayed by absence Pelaez and myself. We sell launch Emma according to your offer. Send money and four monthly promissory notes and state to whom to deliver launch. Address answer to Cebu." (Retraso contestacion ausencia Pelaez y mia. Vendemos lancha Emma conforme oferta suya envie dinero y cuatro pagares mensuales y ordene a quien entregare lancha dirija contestacion Cebu.) The answer reached Manila on the 30th of that month. On the 2nd day of the following month Mr. Roda again telegraphed Mr. Vamenta in the following terms: "From Catmon I telegraphed you at wrong address accepting your offer for purchase of launch Emma. Am in Cebu awaiting your orders. Launch also here." (Desde Catmon telegrafie con direccion erronea aceptando oferta suya compra lancha Emma. Yo estoy en Cebu esperando disposicion suya lancha tambien aqui.) On the 4th day of that month, December, Mr. Pelaez also sent to Mr. Vamenta the following telegram: "Just arrived at Butuan. As to telegraphic offer for purchase of launch Emma I confirm acceptance according terms of telegram of partner Roda." (Acabo llegar Butuan referente proposicion hecha telegrama compra lancha Emma confirmo aceptacion terminos telegrama socio Roda.) On the 4th of the same month of December Mr. Vamenta sent from Manila to Mr. Roda at Cebu the following telegram: "Because of your delay in answering my previous telegram we are considering another offer for the sale of a launch here. Will try to break off this transaction in order to put that with yours through." (En vista tardanza contestacion mi anterior telegrama consideramos otra proposicion venta lancha aqui procure deshacer compromiso aqui para quedarnos con la de Vds.)

When the telegram of Mr. Vamenta dated November 22 reached Cebu Mr. Pelaez was absent in Agusan and Mr. Roda was in a municipality of the Province of Cebu many kilometers away from the capital, the place where telegrams are received and distributed. Upon receiving that telegram of Mr. Vamenta, the family of Mr. Pelaez sent it to Mr. Roda, who received it on the 25th of that month, the latter thereby incurring a delay of hardly five days in sending his answer of the 29th.

This action is now instituted by the plaintiffs to compel the defendant to effect the purchase of the launch Emma. The court, considering that in this transaction time was of importance to the contracting parties and that the plaintiffs delayed the acceptance of the offer of Mr. Vamenta, absolved the defendant.

We are not disposed to confirm the judgment on this ground. In view of the circumstances that we have stated it seems that the delay of hardly five days on the part of Mr. Roda in answering the telegram of Mr. Vamenta is not alone sufficient to divest the transaction of all effect, especially when the fact is considered that the telegram was addressed to Mr. Pelaez, who was absent, and was received by Mr. Roda, who is not the sole owner of the launch. It seems, furthermore, judging from the fact that Mr. Vamenta did not announce his withdrawal of the offer for the purchase of the launch until four days after the receipt of the answer of Mr. Roda, that this delay was not as important to the defendant as the lower court stated it was. On the other hand, contracts by correspondence are perfected from the moment an answer is made accepting the offer (art. 54, Code of Commerce), and in the case at bar the offer of Mr. Vamenta, if there was any, was not only answered with an acceptance, but this answer was received four days before Mr. Vamenta withdrew the offer.

However, we are of the opinion that the judgment should be affirmed upon other grounds.

The terms of the telegram of Mr. Vamenta dated November 22d do not mean that he already intended to bind himself to purchase the launch. As will be seen, he merely asked Mr. Pelaez if he would agree to sell the launch upon the conditions expressed in the telegram. It is clear that this was not binding himself to purchase the launch. It should be taken into account that Mr. Vamenta, in sending the telegram to Mr. Pelaez, was acting on behalf of the defendant, and it is easily understood that in asking Mr. Pelaez if he would agree to sell the launch upon the terms stated in the telegram, it could very well be that it was not yet his intention to enter into the contract by means of that telegram but only to inform himself of the conditions under which the launch could be purchased, in order to propose its acquisition to the defendant, whom he represented.

In any event, according to article 51 of the Code of Commerce, telegraphic correspondence shall produce obligatory force only between the contracting parties who may have previously admitted in a written contract this medium of correspondence. It is not shown in this case that the contracting parties have previously admitted this means of binding themselves. The lack of all guaranty of the authenticity of a telegram due to the absence at the time the Code of Commerce was put into effect of a law regulating telegraphic communications for the purpose of giving it such guaranty was the reason for this provision. Until the present time there has been no substantial change in the legislation upon the subject which would warrant us to consider that article 51 of the Code of Commerce is no longer in force.

For the reasons above stated, we affirm the judgment appealed from, with costs. So ordered.

Mapa, C. J., Johnson, Araullo, Malcolm and Villamor, JJ., concur.

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