

**SMITH, BELL & COMPANY, LTD., PLAINTIFF AND APPELLANT,
VS. THE PHILIPPINE NATIONAL BANK, DEFENDANT AND APPELLEE.**

G. R. No. 16482. February 01, 1922

Ponente: STREET, J.

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STREET, J.:

This action was brought by Messrs. Smith, Bell & Co., Ltd., to recover a sum of money of the defendant, the Philippine National Bank, as damages for its failure to accept delivery of certain machinery which had been ordered from the plaintiff by one F. M. Harden, and for the purchase price of which the bank had obligated itself in the manner stated below. After the hearing the trial judge absolved the defendant, and the plaintiff appealed.

It appears that in the month of April, 1918, one Fred M. Harden, being desirous of obtaining eight expellers adopted to the extraction of coconut oil, applied to Smith, Bell & Co., Ltd., importers, of Manila, and ordered said expellers through this house. By the contract signed for this purpose between said Harden and Smith, Bell & Co., on April 25, 1918, the latter "sold" to Harden eight (8) Anderson expellers, end-drive, latest model, for the price of 80,000, to be paid on delivery. It was understood that these expellers would be manufactured in the United States; and it was stipulated that shipment would be made from the United States in the month of February or March of the ensuing year.

In order to assure the prompt payment of the price upon delivery, an arrangement was made between Harden and the Philippine National Bank whereby the latter bound itself to Smith, Bell & Co. for the payment of the contract price, according to the terms of the following letter dated April 27, 1918, which was addressed by the bank to the latter firm:

"Messrs. SMITH, BELL & Co.,

" Manila, P. I.

"GENTLEMEN: In connection with the 8 expellers purchased by Mr. F. M. Harden, amounting to P80,000 please be advised that this institution will pay the above amount upon delivery of the expellers to us, upon condition that these are new Anderson expellers and are laid down in Manila in first class working order.

"Yours very truly,

"J. ELMER DELANEY,

"Acting President"

Shortly after the contract for the purchase of these expellers had been thus made, and on or about May 9, 1918, Harden appeared in the office of Smith, Bell & Co. and requested them to change the order for the expellers from "end-drive" to "side-drive;" and in obedience to this instruction, the house cabled to its agent in New York to change the order accordingly, which was done. This fact is in our opinion clearly established by the concurring testimony of J. H. Schmidt, plaintiff's sales manager, and one J. C. Cowper, who accompanied Harden on the

mission to get the order changed. In addition to this it appears that the side-drive expeller represents an improvement over the end-drive and is of a newer type; and upon the occasion mentioned, Harden exhibited to the manager of Messrs. Smith, Bell & Co., a catalogue from the Anderson factory showing this fact, as explanatory of his change in the order.

On July 2, 1919, Smith, Bell & Co. informed both Harden and the bank that the expellers had arrived. Shortly thereafter Harden, having examined the machinery in the plaintiff's bodega, advised the bank that the expellers were not as ordered. Upon this, the bank naturally refused to accept and pay for the machinery, and the plaintiff disposed of them to the best advantage in the Manila market at a price which was below the price at which Harden had agreed to take them.

The ground upon which the defense is chiefly rested is that the expellers tendered by the plaintiff were "side-drive" instead of "end-drive" expellers, and in support of this contention Harden was produced by the defendant as a witness, and he denied that the order for expellers had been changed upon his instructions. As we have already stated, this contention is untenable; and we do not hesitate to find upon the proof before us that the order was changed at Harden's request. For the rest, it is shown that the expellers tendered by the plaintiff were new Anderson expellers, in all respects in first-class working order.

In the light of these facts the right of the plaintiff to recover is clear. The contract by which the bank obligated itself is both in form and effect an independent undertaking on the part of the bank directly to the plaintiff; and inasmuch as the plaintiff has complied, or offered to comply, with the terms of said contract, the bank is bound by its promise to pay the purchase price. The consideration for this promise is to be found in the credit extended to Harden by the plaintiff and in the fact that the plaintiff, relying¹ upon the bank's promise, has gone to the expense of bringing to these Islands the expellers which Harden had ordered.

It is undeniable that the contract sued on had its origin and explanation in the contract between Harden and the plaintiff, and the bank of course obligated itself solely for the purpose of assuring the payment of the purchase price of the expellers to the plaintiff. But this does not make the bank subsidiarily liable as regards the contract which is the subject of this suit. Its obligation to the plaintiff is direct and independent. Moreover, the debt must be considered a liquidated debt, in the sense intended in article 1825 of the Civil Code; and the action is now maintainable by the plaintiff directly against the bank without regard to the position of Harden.

At this point the thought may possibly suggest itself that if the view above indicated is correct, and the bank is to be considered strictly in the light of an independent promisor, a consequence would be that Harden had no authority to change the order from end-drive to side-drive expellers; in other words, that the bank should be held to be obligated according to the terms of the order as it stood when the bank entered into the undertaking which is the subject of the suit. Having regard, however, to the situation as all parties understood it, we are of opinion that the act of Harden in changing the order could not affect the liability of the defendant bank, especially since the specification in the bank's letter calls for "new" Anderson expellers and the change made was rather in furtherance of this specification than prejudicial to it. The real purpose of the bank, as all parties were well aware, was to supply its credit to enable Harden to obtain the expellers ordered by himself, and for his purposes, and it would tend to frustrate the intention of the parties to hold that Harden had no authority to change the order to the extent stated.

We observe that in the second amended complaint of March 8, 1920,—which was the first complaint in which the plaintiff signified his election to claim damages for breach of contract—the damages are alleged to have been in the sum of P26,339.55, upon which it is asked that interest be allowed at the legal rate from the date of this complaint. Upon examining the several items which go to compose the damages, as indicated in the statement, Exhibit D,

prepared by the plaintiff's department of accounts, we consider the following to be legitimate charges, namely, first, the difference between the contract price and the amount realized from the sale of the expellers,—P22,400; secondly, various charges for storage, insurance, etc., while the machinery remained in the plaintiff's hands after it should have been delivered to the defendant,—P665.34; and, thirdly, expenses actually paid out by the plaintiff in moving the expellers, and for coolie hire,—P640. In the itemized statement of damages submitted by the plaintiff, interest has been compounded monthly at 8 per cent, but in the absence of express stipulation this cannot be allowed; and we are the more disposed to eliminate this charge for interest, for the reason that the plaintiff's sales manager has in effect admitted that the terms imposed by the plaintiff on Harden were severe.

Judgment will be reversed, and the plaintiff will recover of the defendant the sum of twenty-three thousand seven hundred five pesos and thirty-four centavos (P23,705.34), with legal interest from March 8, 1920. No special pronouncement will be made as to costs of either instance. So ordered.

Johnson, Araullo, Avanceña, Villamor, and Johns, JJ., concur.

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