

JAMES D. BARTON, PLAINTIFF AND APPELLEE, VS. LEYTE ASPHALT & MINERAL OIL CO., LTD., DEFENDANT AND APPELLANT.*G.R. No. 21237. March 22, 1924*

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-21237/>**STREET, J.:**

This action was instituted in the Court of First Instance of the City of Manila by James D. Barton, to recover of the Leyte Asphalt & Mineral Oil Co., Ltd., as damages for breach of contract, the sum of \$313,563.30, United States currency, and further to secure a judicial pronouncement to the effect that the plaintiff is entitled to an extension of the terms of the sales agencies specified in the contract Exhibit A. The defendant answered with a general denial, and the cause was heard upon the proof, both documentary and oral, after which the trial judge entered a judgment absolving the defendant corporation from four of the six causes of action set forth in the complaint and giving judgment for the plaintiff to recover of said defendant, upon the first and fourth causes of action, the sum of \$202,500, United States currency, equivalent to ff405,000, Philippine currency, with legal interest from June 2, 1921, and with costs. From this judgment the defendant company appealed.

The plaintiff is a citizen of the United States, resident in the City of Manila, while the defendant is a corporation Organized under the laws of the Philippine Islands with its principal office in the City of Cebu, Province of Cebu, Philippine Islands. Said company appears to be the owner of a valuable deposit of bituminous limestone and other asphalt products, located on the Island of Leyte and known as the Lucio mine. On April 21, 1920, one William Anderson, as president and general manager of the defendant company, addressed a letter Exhibit 8, to the plaintiff Barton, authorizing the latter to sell the products of the Lucio mine in the Commonwealth of Australia and New Zealand upon a scale of prices indicated in said letter.

In the third cause of action stated in the complaint the plaintiff alleges that during the life of the agency indicated in Exhibit B, he rendered services to the defendant company in the way of advertising and demonstrating the products of the defendant and expended large sums of money in visiting various parts of the world for the purpose of carrying on said advertising and demonstrations, in shipping to various parts of the world samples of the products of the defendant, and in otherwise carrying on advertising work. For these services and expenditures the plaintiff sought, in said third cause of action, to recover the sum of \$16,563.80, United States currency. The court, however, absolved the defendant from all liability on this cause of action and the plaintiff did not appeal, with the result that we are not now concerned with this phase of the case. Besides, the authority contained in said Exhibit B was admittedly superseded by the authority expressed in a later letter, Exhibit A, dated October 1, 1920. This document bears the approval of the board of directors of the defendant company and was formally accepted by the plaintiff. As it supplies the principal basis of the action, it will be quoted in its entirety.

"(Exhibit A)

"CEBU, CEBU, P. I.,

"October 1, 1920.

"JAMES D. BARTON, ESQ.,

"Cebu Hotel City.

"DEAR SIR:—You are hereby given the sole and exclusive sales agency for our bituminous limestone and other asphalt products of the Leyte Asphalt and Mineral Oil Company, Ltd., until May first, 1922, in the following territory:

Australia

Saigon

Java

New Zealand

India

China

Tasmania

Sumatra

Hongkong

"Siam and the Straits Settlements, also in the United States of America until May 1, 1921.

"As regards bituminous limestone mined from the Lucio property. No orders for less than one thousand (1,000) tons will be accepted except under special agreement with us. All orders for said products are to be billed to you as follows:

Per ton

In 1,000 ton lots.....

P15

In 2,000 ton lots.....

14

In 5,000 ton lots

12

In 10,000 ton lots

10

with the understanding, however, that, should the sales in the above territory equal or exceed ten thousand (10,000) tons in the year ending October 1, 1921, then in that event the price of all shipments made during the above period shall be ten pesos (P10) per ton, and any sum charged to any of your customers or buyers in the aforesaid territory in excess of ten pesos (P10) per ton, shall be rebated to you. Said rebate to be due and payable when the gross sales have equalled or exceeded ten thousand (10,000) tons in the twelve months period as hereinbefore described. Rebates on lesser sales to apply as per above price list.

"You are to have full authority to sell said product of the Lucio mine for any sum you see fit in excess of the prices quoted above and such excess in price shall be your extra and additional profit and commission. Should we make any collections in excess of the prices quoted, we agree to remit same to you within ten (10) days of the date of such collections or payments.

"All contracts taken with municipal governments will be subject to inspection before shipping, by any authorized representative of such governments at whatever price may be contracted for by you and we agree to accept such contracts subject to draft attached to bill of lading in full payment of such shipment.

"It is understood that the purchasers of the products of the Lucio mine are to pay freight from the mine carriers to destination and are to be responsible for all freight, insurance and other charges, providing said shipment has been accepted by their inspectors.

"All contracts taken with responsible firms are to be under the same conditions as with municipal governments.

"All contracts will be subject to delays caused by the acts of God, over which the parties hereto have no control.

"It is understood and agreed that we agree to load all ships, steamers, boats or other carriers promptly and without delay and load not less than 1,000 tons each twenty-four hours after March 1, 1921, unless we so notify you specifically prior to that date that we are prepared to load at that rate, and it is also stipulated that we shall not be required to ship orders of 5,000 tons except on 30 days notice and 10,000 tons except on 60 days notice.

"If your sales in the United States reach five thousand tons on or before May 1, 1921, you are to have sole rights for this territory also for one year additional and should your sales in the second year reach or exceed ten thousand tons you are to have the option to renew the agreement for this territory on the same terms for an additional two years.

"Should your sales equal or exceed ten thousand (10,000) tons in the year ending October 1, 1921, or twenty thousand (20,000) tons by May 1, 1922, then this contract is to be continued automatically for an additional three years ending April 30, 1925, under the same terms and conditions as above stipulated.

"The products of the other mines can be sold by you in the aforesaid territories under the same terms and conditions as the products of the Lucio mine; scale of prices to be mutually agreed upon between us.

"LEYTE ASPHALT & MINERAL OIL CO., LTD.

"By (Sgd.) WM. ANDERSON

"President

(Sgd.) "W. C. A. PALMER

"Secretary

"Approved by Board of Directors,

"October 1, 1920.

(Sgd.) "WM. ANDERSON

"President

"Accepted.

(Sgd.) "JAMES D. BARTON

"Witness D. G. MCVEAN"

Upon careful perusal of the fourth paragraph from the end of this letter it is apparent that some negative word has been inadvertently omitted before "prepared," so that the full expression should be "unless we should notify you specifically prior to that date that we are unprepared to load at that rate," or "not prepared to load at that rate."

Very soon after the aforesaid contract became effective, the plaintiff requested the defendant company to give him a similar selling agency for Japan. To this request the defendant company, through its president, Wm. Anderson, replied, under date of November 27, 1920, as follows:

"In re your request for Japanese agency, will say, that we are willing to give you, the same commission on all sales made by you in Japan, on the same basis as your Australian sales, but we do not feel like giving you a regular agency for Japan until you can make some large sized sales there, because some other people have given us assurances that they can handle our Japanese sales, therefore we have decided to leave this agency open for a time."

Meanwhile the plaintiff had embarked for San Francisco and upon arriving at that port he entered into an agreement with Ludvigsen & McCurdy, of that city, whereby said firm was constituted a subagent and given the sole selling rights for the bituminous limestone products of the defendant company for the period of one year from November 11, 1920, on terms stated in the letter Exhibit E. The territory assigned to Ludvigsen & McCurdy included San Francisco and all territory in California north of said city. Upon an earlier voyage during the same year to Australia, the plaintiff had already made an agreement with Frank B. Smith, of Sydney, whereby the latter was to act as the plaintiff's sales agent for bituminous limestone mined at the defendant's quarry in Leyte, until February 12, 1921. Later the same agreement was extended for the period of one year from January 1, 1921. (Exhibit Q.)

On February 5, 1921, Ludvigsen & McCurdy, of San Francisco, addressed a letter to the plaintiff, then in San Francisco, advising him that he might enter an order for six thousand tons of bituminous limestone to be loaded at Leyte not later than May 5, 1921, upon terms stated in the letter Exhibit G. Upon this letter the plaintiff immediately indorsed his acceptance.

The plaintiff then returned to Manila; and on March 2, 1921, Anderson wrote to him from Cebu, to the effect that the company was behind with construction and was not then able to handle big contracts. (Exhibit FF.) On March 12, Anderson was in Manila and the two had an interview in the Manila Hotel, in the course of which the plaintiff informed Anderson of the San Francisco order. Anderson thereupon said that, owing to lack of capital, adequate facilities had not been provided by the company for filling large orders and suggested that the plaintiff had better hold up in the matter of taking orders. The plaintiff expressed surprise at this and told Anderson that he had not only the San Francisco order (which he says he exhibited to Anderson) but other orders for large quantities of bituminous limestone to be shipped to Australia and Shanghai. In another interview on the same day Anderson definitely informed the plaintiff that the contracts which he claimed to have procured would not be filled.

Three days later the plaintiff addressed a letter (Exhibit Y) to the defendant company in Cebu, in which he notified the company to be prepared to ship five thousand tons of bituminous limestone to John Chapman Co., San Francisco, loading to commence on May 1, and to proceed at the rate of one thousand tons per day of each twenty-four hours, weather permitting.

On March 5, 1921, Frank B. Smith, of Sydney, had cabled the plaintiff an order for five thousand tons of bituminous limestone; and in his letter of March 15 to the defendant, the plaintiff advised the defendant company to be prepared to ship another five thousand tons of bituminous limestone, on or about May 6, 1921, in addition to the intended consignment for San Francisco. The name Henry E. White was indicated as the name of the person through whom this contract had been made, and it was stated that the consignee would be named later, no destination for the shipment being given. The plaintiff explains that the name White, as used in this letter, was based on an inference which he had erroneously drawn from the cable sent by Frank B. Smith, and his intention was to have the second shipment consigned to Australia in response to Smith's order.

It will be noted in connection with this letter of the plaintiff, of March 15, 1921, that no mention was made of the names of the person, or firm, for whom the shipments were really intended. The obvious explanation that occurs in connection with this is that the plaintiff did not then care to reveal the fact that the two orders had originated from his own subagents in San Francisco and Sydney.

To the plaintiff's letter of March 15, the assistant manager of the defendant company replied on March 25, 1921, acknowledging the receipt of an order for five thousand tons of bituminous limestone to be consigned to John Chapman Co., of San Francisco, and the further amount of five thousand tons of the same material to be consigned to Henry E. White; and it was stated that "no orders can be entertained unless cash has been actually deposited with either the International Banking Corporation or the Chartered Bank of India, Australia and China, Cebu." (Exhibit Z.)

To this letter the plaintiff in turn replied from Manila, under date of March 29, 1921, questioning the right of the defendant to insist upon a cash deposit in Cebu prior to the filling of the orders. In conclusion the plaintiff gave orders for shipment to Australia of five thousand tons, or more, about May 22, 1921, and ten thousand tons, or more, about June 1, 1921. In conclusion the plaintiff said "I have arranged for deposits to be made on these additional shipments if you will signify your ability to fulfill these orders on the dates mentioned." No name was mentioned as the purchaser, or purchasers, of these intended Australian consignments.

Soon after writing the letter last above-mentioned, the plaintiff embarked for China and Japan. With his activities

in China we are not here concerned, but we note that in Tokio, Japan, he came in contact with one H. Hiwatari, who appears to have been a suitable person for handling bituminous limestone for construction work in Japan. In the letter Exhibit X, Hiwatari speaks of himself as if he had been appointed exclusive sales agent for the plaintiff in Japan, but no document expressly appointing him such is in evidence.

While the plaintiff was in Tokio he procured the letter Exhibit W, addressed to himself, to be signed by Hiwatari. This letter, endited by the plaintiff himself, contains an order for one thousand tons of bituminous limestone from the quarries of the defendant company, to be delivered as soon after July 1, 1921, as possible. In this letter Hiwatari states, "on receipt of the cable from you, notifying me of date you will be ready to ship, and also tonnage rate, I will agree to transfer through the Bank of Taiwan, of Tokio, to the Asia Banking Corporation, of Manila, P. I., the entire payment of \$16,000 gold, to be subject to your order on delivery of documents covering bill of lading of shipment, the customs report of weight, and prepaid export tax receipt. I will arrange in advance a confirmed or irrevocable letter of credit for the above amount so that payment can be ordered by cable, in reply to your cable advising shipping date."

In a later letter, Exhibit X, of May 16, 1921, Hiwatari informs the plaintiff that he had shown the contract, signed by himself, to the submanager of the Taiwan Bank who had given it as his opinion that he would be able to issue, upon request of Hiwatari, a credit note for the contracted amount, but he added that the submanager was not personally able to place his approval on the contract as that was a matter beyond his authority. Accordingly Hiwatari advised that he was intending to make further arrangements when the manager of the bank should return from Formosa.

In the letter of May 5, 1921, containing Hiwatari's order for one thousand tons of bituminous limestone, it was stated that if the material should prove satisfactory after being thoroughly tested by the Paving Department of the City of Tokio, he would contract with the plaintiff for a minimum quantity of ten thousand additional tons, to be used within a year from September 1, 1921, and that in this event the contract was to be automatically extended for an additional four years. The contents of the letter of May 5 seems to have been conveyed, though imperfectly, by the plaintiff to his attorney, Mr. Frank B. Ingersoll, of Manila; and on May 17, 1921, Ingersoll addressed a note to the defendant company in Cebu in which he stated that he had been requested by the plaintiff to notify the defendant that the plaintiff had accepted an order from Hiwatari, of Tokio, approved by the Bank of Taiwan, for a minimum order of ten thousand tons of the stone annually for a period of five years, the first shipment of one thousand tons to be made as early after July 1 as possible. It will be noted that this communication did not truly reflect the contents of Hiwatari's letter, which called unconditionally for only one thousand tons, the taking of the remainder being contingent upon future eventualities.

It will be noted that the only written communications between the plaintiff and the defendant company in which the former gave notice of having any orders for the sale of bituminous limestone are the four letters Exhibits Yr AA, BB, and II. In the first of these letters, dated March 15, 1921, the plaintiff advises the defendant company to be prepared to ship five thousand tons of bituminous limestone, to be consigned to John Chapman Co., of San Francisco, to be loaded by May 5, and a further consignment of five thousand tons, through a contract with Henry E. White, consignees to be named later. In the letter Exhibit BB dated May 17, 1921, the plaintiff's attorney gives notice of the acceptance by plaintiff of an order from Hiwatari, of Tokio, approved by the Bank of Taiwan, for a minimum of ten thousand tons annually for a period of five years, first shipment of a thousand tons to be as early after July 1 as possible. In the letter Exhibit II the plaintiff gives notice of an "additional" (?) order from H. E. White,, Sydney, for two lots of bituminous limestone of five thousand tons each, one for shipment not later than June 30, 1921, and the other by July 20, 1921. In the same letter the plaintiff reports for the first time an order for five thousand tons from F. B. Smith, to be shipped to Brisbane, Australia, by June 30, and a similar amount within

thirty days later.

After the suit was brought, the plaintiff filed an amendment to his complaint in which he set out, in tabulated form, the orders which he claims to have received and upon which his letters of notification to the defendant company were based. In this amended answer the name of Ludvigsen & McCurdy appears for the first time; and the name of Frank B. Smith, of Sydney, is used for the first time as the source of the intended consignments of May 1, May 22, and June 1. We note, furthermore, that the letters, Exhibits G, L, M, and W, containing the orders from Ludvigsen & McCurdy, Frank B. Smith and H. Hiwatari were at no time submitted for inspection to any officer of the defendant company, except possibly the Exhibit G, which the plaintiff claims to have shown to Anderson in Manila on March 12, 1921.

The different items comprising the award which the trial judge gave in favor of the plaintiff are all based upon the orders given by Ludvigsen & McCurdy (Exhibit G), by Frank B. Smith (Exhibits L and M), and by Hiwatari in Exhibit W; and the appeal does not involve an order which came from Shanghai, China. We therefore now address ourselves to the question whether or not the orders contained in Exhibits G, L, M, and W, in connection with the subsequent notification thereof given by the plaintiff to the defendant, are sufficient to support the judgment rendered by the trial court.

The transaction indicated in the orders from Ludvigsen & McCurdy and from Frank B. Smith must, in our opinion, be at once excluded from consideration as emanating from persons who had been constituted mere agents of the plaintiff. The San Francisco order and the Australian orders are the same in legal effect as if they were orders signed by the plaintiff and drawn upon himself; and it cannot be pretended that those orders represent sales to bona fide purchasers found by the plaintiff. The original contract by which the plaintiff was appointed sales agent for a limited period of time in Australia and the United States contemplated that he should find reliable and solvent buyers who should be prepared to obligate themselves to take the quantity of bituminous limestone contracted for upon terms consistent with the contract. These conditions were not met by the taking of these orders from the plaintiff's own subagents, which was as if the plaintiff had bought for himself the commodity which he was authorized to sell to others. Article 267 of the Code of Commerce declares that no agent shall purchase for himself or for another that which he has been ordered to sell. The law has placed its ban upon a broker's purchasing from his principal unless the latter with full knowledge of all the facts and circumstances acquiesces in such course; and even then the broker's action must be characterized by the utmost good faith. A sale made by a broker to himself without the consent of the principal is ineffectual whether the broker has been guilty of fraudulent conduct or not. (4 R. C. L., 276-277.) We think, therefore, that the position of the defendant company is indubitably sound in so far as it rests upon the contention that the plaintiff has not in fact found any bona fide purchasers ready and able to take the commodity contracted for upon terms compatible with the contract which is the basis of the action.

It will be observed that the contract set out at the beginning of this opinion contains provisions under which the period of the contract might be extended. That privilege was probably considered a highly important incident of the contract; and it will be seen that the sale of five thousand tons which the plaintiff reported for shipment to San Francisco was precisely adjusted to the purpose of the extension of the contract for the United States for the period of an additional year; and the sales reported for shipment to Australia were likewise adjusted to the requirements for the extension of the contract in that territory. Given the circumstances surrounding these contracts as they were reported to the defendant company and the concealment by the plaintiff of the names of the authors of the orders,—who after all were merely the plaintiff's subagents,—the officers of the defendant company might justly have entertained the suspicion that the real and only person behind those contracts was the plaintiff himself. Such at least turns out to have been the case.

Much energy has been expended in the briefs upon this appeal over the contention whether the defendant was justified in laying down the condition mentioned in the letter of March 26, 1921, to the effect that no order would be entertained unless cash should be deposited with either the International Banking Corporation or the Chartered Bank of India, Australia and China, in Cebu. In this connection the plaintiff points to the stipulation of the contract which provides that contracts with responsible parties are to be accepted "subject to draft attached to bill of lading in full payment of such shipment." What passed between the parties upon this point appears to have the character of mere diplomatic parrying, as the plaintiff had no contract from any responsible purchaser other than his own subagents and the defendant company could not probably have filled the contracts even if they had been backed by the Bank of England.

Upon inspection of the plaintiff's letters (Exhibits Y and AA), there will be found ample assurance that deposits for the amount of each shipment would be made with a bank in Manila provided the defendant would indicate its ability to fill the orders; but these assurances rested upon no other basis than the financial responsibility of the plaintiff himself, and this circumstance doubtless did not escape the discernment of the defendant's officers.

With respect to the order from H. Hiwatari, we observe that while he intimates that he had been promised the exclusive agency under the plaintiff for Japan, nevertheless it does not affirmatively appear that he had been in fact appointed to be such at the time he signed the order Exhibit W at the request of the plaintiff. It may be assumed, therefore, that he was at that time a stranger to the contract of agency. It clearly appears, however, that he did not expect to purchase the thousand tons of bituminous limestone referred to in his order without banking assistance ; and although the submanager of the Bank of Taiwan had said something encouraging in respect to the matter, nevertheless that official had refrained from giving his approval to the order Exhibit W. It is therefore not shown affirmatively that this order proceeds from a responsible source.

The first assignment of error in the appellant's brief is directed to the action of the trial judge in refusing to admit Exhibits 2, 7, 8, 9 and 10, offered by the defendant, and in admitting Exhibit E, offered by the plaintiff. The Exhibit 2 is a letter dated June 25, 1921, or more than three weeks after the action was instituted, in which the defendant's assistant general manager undertakes to reply to the plaintiff's letter of March 29 preceding. It was evidently intended as an-argumentative presentation of the plaintiff's point of view in the litigation then pending, and its probative value is so slight, even if admissible at all, that there was no error on the part of the trial court in excluding it.

Exhibits 7, 8, 9 and 10 comprise correspondence which passed between the parties by mail or telegraph during the first part of the year 1921. The subject-matter of this correspondence relates to efforts that were being made by Anderson to dispose of the controlling interest in the defendant corporation, and Exhibit 9 in particular contains an offer from the plaintiff, representing certain associates, to buy out Anderson's interest for a fixed sum. While these exhibits perhaps shed some light upon the relations of the parties during the time this controversy was brewing, the bearing of the matter upon the litigation before us is too remote to exert any definitive influence on the case. The trial court was not in error in our opinion in excluding these documents.

Exhibit E is a letter from Anderson to the plaintiff, dated April 21, 1920, in which information is given concerning the property of the defendant company. It is stated in this letter that the output of the Lucio mine (quarry) during the coming year would probably be at the rate of about five tons for twenty-four hours, with the equipment then on hand, but that with the installation of a model cableway which was under contemplation, the company would be able to handle two thousand tons in twenty-four hours. We see no legitimate reason for rejecting this document, although of slight probative value; and the error imputed to the court in admitting the same was not committed.

Exhibit 14, which was offered in evidence by the defendant, consists of a carbon copy of a letter dated June 13, 1921, written by the plaintiff to his attorney, Frank B. Ingersoll, Esq., of Manila, and in which plaintiff states, among other things, that his profits from the San Francisco contract would have been at the rate of eighty-five cents (gold) per ton. The authenticity of this document is admitted, and when it was offered in evidence by the attorney for the defendant the counsel for the plaintiff announced that he had no objection to the introduction of this carbon copy in evidence if counsel for the defendant would explain where this copy was secured. Upon this the attorney for the defendant informed the court that he received the letter from the former attorneys of the defendant without explanation of the manner in which the document had come into their possession. Upon this the attorney for the plaintiff made this announcement: "We hereby give notice at this time that unless such an explanation is made, explaining fully how this carbon copy came into the possession of the defendant company, or any one representing it, we propose to object to its admission on the ground that it is a confidential communication between client and lawyer." No further information was then given by the attorney for the defendant as to the manner in which the letter had come to his hands and the trial judge thereupon excluded the document, on the ground that it was a privileged communication between client and attorney.

We are of the opinion that this ruling was erroneous; for even supposing that the letter was within the privilege which protects communications between attorney and client, this privilege was lost when the letter came to the hands of the adverse party. And it makes no difference how the adversary acquired possession. The law protects the client from the effect of disclosures made by him to his attorney in the confidence of the legal relation, but when such a document, containing admissions of the client, comes to the hand of a third party, and reaches the adversary, it is admissible in evidence. In this connection Mr. Wigmore says:

"The law provides subjective freedom for the client by assuring him of exemption from its processes of disclosure against himself or the attorney or their agents of communication. This much, but not a whit more, is necessary for the maintenance of the privilege. Since the means of preserving secrecy of communication are entirely in the client's hands, and since the privilege is a derogation from the general testimonial duty and should be strictly construed, it would be improper to extend its prohibition to third persons who obtain knowledge of the communications. One who overhears the communication, whether with or without the client's knowledge, is not within the protection of the privilege. The same rule ought to apply to one who surreptitiously reads or obtains possession of a document in original or copy." (5 Wigmore on Evidence, 2d ed., sec. 2326.)

Although the precedents are somewhat confusing, the better doctrine is to the effect that when papers are offered in evidence a court will take no notice of how they were obtained, whether legally or illegally, properly or improperly; nor will it form a collateral issue to try that question. (10 R. C. L., 931; 1 Greenl. Evid., sec. 254a; State vs. Mathers, 15 L. R. A., 268; Gross vs. State, 33 L. R. A., [N. S.], 477, note.)

Our conclusion upon the entire record is that the judgment appealed from must be reversed; and the defendant will be absolved from the complaint. It is so ordered, without special pronouncement as to costs of either instance.

Araullo, C. J., Johnson, Avancena, Ostrand, Johns, and Romualdez, JJ., concur.

DISSENTING

MALCOLM, J.,

An intensive scrutiny of every phase of this case leads me to the conclusion that the trial judge was correct in his findings of fact and in his decision. Without encumbering the case with a long and tedious dissent, I shall

endeavor to explain my point of view as briefly and clearly as possible.

A decision must be reached on the record as it is and not on a record as we would like to have it. The plaintiff and the defendant deliberately entered into a contract, the basis of this action. The plaintiff, proceeding pursuant to this contract, spent considerable effort and used considerable money to advance the interests of the defendant and to secure orders for its products. These orders were submitted to the president of the defendant company personally and later formally by writing. Prior to the institution of the suit, the only objection of the defendant was that the money should be deposited with either the International Banking Corporation or the Chartered Bank of India, Australia and China at Cebu, a stipulation not found in the contract.

A reasonable deduction, therefore, is that the plaintiff presented orders under circumstances which were a substantial compliance with the terms of the contract with the defendant, and which insured to the defendant payment for its deliveries according to the price agreed upon, and that as the defendant has breached its contract, it must respond in damages.

The current running through the majority opinion is that the orders emanated from subagents of the plaintiff, and that no bona fide purchasers were ready and able to take the commodity contracted for upon terms compatible with the contract. The answer is, in the first place, that the contract nowhere prohibits the plaintiff to secure subagents. The answer is, in the second place, that the orders were so phrased as to make the persons making them personally responsible. The Ludvigsen & McCurdy order from San Francisco begins: "You can enter our order for 6,000 tons of bituminous limestone as per sample submitted, at \$10 gold per ton, f. o. b., island of Leyte, subject to the following terms and conditions: * * *" (Exhibit G). The Smith order from Australia contains the following: "It is therefore with great pleasure I confirm the booking of the following orders, to be shipped at least within a week of respective dates: ***** (Exhibit L). The Japan order starts with the following sentence: "You can enter my order for 1,000 tons of 1,000 kilos each of bituminous limestone from the quarries of the Leyte Asphalt and Mineral Oil Co. * * *" (Exhibit W.)

But the main point of the plaintiff which the majority decision misses entirely centers on the proposition that the orders were communicated by the plaintiff to the defendant, and that the only objection the defendant had related to the manner of payment. To emphasize this thought again, let me quote the reply of the defendant to the plaintiff when the defendant acknowledged receipt of the orders placed by the plaintiff. The letter reads: "In reply to same we have to advise you that no orders can be entertained unless cash has been actually deposited with either the International Banking Corporation or the Chartered Bank of India, Australia and China, Cebu." (Exhibit Y.) Prior to the filing of suit, the defendant company never at any time raised any question as to whether the customers secured by plaintiff were "responsible firms" within the meaning of the contract, and never secured any information whatsoever as to their financial standing. Consequently, defendant is now estopped by its conduct from raising new objections for rejection of the orders. (Mechem on Agency, section 2441.)

The majority decision incidentally takes up for consideration assignments of error 1 and 2 having to do with either the admission or the rejection by the trial court of certain exhibits. Having in mind that the Court reverses the court a quo on the facts, what is said relative to these two assignments is absolutely unnecessary for a judgment, and even as obiter dicta, contains unfortunate expressions. Exhibit 14, for example, is a letter addressed by the plaintiff to his lawyer and probably merely shown to the counsel of the defendant during negotiations to seek a compromise. Whether that exhibit be considered improperly rejected or not would not change the result one iota.

The rule now announced by the Court that it makes no difference how the adversary acquired possession of the document, and that a court will take no notice of how it was obtained, is destructive of the attorney's privilege and constitutes an obstacle to attempts at friendly compromise. In the case of *Uy Chico vs. Union Life Assurance*

Society ([1915], 29 Phil., 163), it was held that communications made by a client to his attorney for the purpose of being communicated to others are not privileged if they have been so communicated. But here, there is no intimation that Exhibit 14 was sent by the client to the lawyer for the purpose of being communicated to others. The Supreme Court of Georgia in the case of Southern Railway Co. vs. White ([1899], 108 Ga., 201), held that statements in a letter to a party's attorney handed by the latter to the opponent's attorney, are confidential communications and must be excluded.

Briefly, the decision of the majority appears to me to be defective in the following particulars: (1) It sets aside without good reason the fair findings of fact as made by the trial court and substitutes therefor other findings not warranted by the proof; (2) it fails to stress plaintiff's main argument, and (3) it lays down uncalled for rules which undermine the inviolability of a client's communications to his attorney.

Accordingly, I dissent and vote for an affirmance of the judgment.

Judgment reversed.

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