

ROBINSON, FLEMING & CO., PLAINTIFF AND APPELLANT, VS. CRUZ & TAN CHONG SAY, DEFENDANT AND APPELLEE.*G. R. No 24904. March 25, 1926*

Ponente: JOHNS, J.

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Plaintiff is a partnership organized and existing under the laws of Great Britain, with a resident attorney-in-fact in the Philippine Islands.

The defendant is a domestic partnership doing business in the City of Manila, and it is alleged that it is represented in London, England, by a duly appointed agent and attorney-in-fact.

Plaintiff claims that under a written contract executed about April 1, 1921, known in the record as Exhibit A, it bought from the defendant 500 bales of Manila hemp grade J at 40 pounds less 1 per cent, equivalent, in Philippine currency, to P364.66, per ton of 20 cwt. net landed weight. That pursuant to the contract, on May 31, 1921, the defendant shipped in two parcels from Manila to London, for delivery to plaintiff, the 500 bales of Manila hemp grade JDC/J, freight and f. p. a. insurance for the account of the defendant, which hemp upon being weighed in London, and deducting the tare, as provided for in the contract, amounted to 1182 cwt.—2 qtrs.—10 pounds equivalent to 59.13 tons of 20 cwt. net weight, and after deducting freight, commission, and insurance, as the contract provides, it had an invoice value of 1872 pounds—6s—4d, equivalent to P17,241.48, Philippine currency. That at the time of the shipment, defendant drew upon plaintiff for P18,417.27, which draft the plaintiff paid by means of a letter of credit, thus leaving a balance due and owing the plaintiff of P1,175.79. That upon the arrival of the hemp in London, it was found that it was not in merchantable condition, and was not so when it was shipped from Manila. Therefore, arbitration was had under the provisions of clause 9 of the contract at a cost of P218.17 for the account of the defendant, which arbitration resulted in an allowance to plaintiff of a reduction in the price of P13,150.04, which arbitration and its findings were approved and accepted by the defendant. That after the shipment, defendant did not, without undue delay, provide plaintiff with Government graders' certificates for the hemp, and by reason thereof, plaintiff was obliged to lighter and store 250 bales of it pending the arrival of the Government graders' certificates at a cost of P135.37. That by reason of such acts, the defendant became indebted to the plaintiff in the sum of P14,461.20, no part of which has been paid, except the sum of P11,687.87, which was the net value of 450 bales of Manila hemp grade J shipped by defendant to plaintiff during July, 1921, leaving a balance then due and owing from defendant to plaintiff, on its first cause of action, of P2,539.09, for which demand has been made and payment refused.

Like allegations are made in a second cause of action, in which plaintiff claims P722.53, and in the third cause of action, for which it claims P3,526.71, and in the fourth cause of action P3,673.09.

For answer the defendant made a general and specific denial of all of the material allegations made in the

complaint.

After the evidence was taken upon such issues, the lower court rendered judgment for the defendant, to which the plaintiff duly excepted and filed a motion for a new trial, which was overruled.

The plaintiff appeals and assigns the following errors:

"I. The trial court erred in that, after finding that Messrs. H. E. Marchant and Francis Adams, during all the times material to the issues in this case, had been agents of the defendant in London for the purpose of selling and disposing of its hemp, the nature, character, and scope of such agency not appearing to have been limited, the trial court held that plaintiff was obliged to show such agency to have included within its scope matters necessary and incidental to the selling and disposing of defendant's hemp in London.

"II. The trial court erred" in holding that the plaintiff was bound to show before the court what evidence was before the arbitrators when they made up the award; that the action of the arbitrators was not binding upon the court and that the court was not bound to assume that such action was legal and just.

"III. The trial court erred in finding, in its final decision, that plaintiff was a British Corporation.

"IV. The trial court erred in finding in its final decision that it had sustained objections to certain portions of the deposition of the witness William Ernest Sibley, offered by plaintiff and couched in the following words:

" 'When the said 500 bales arrived in London, the plaintiffs found that the hemp was not in sound, dry condition in accordance with the clause 9 of the said contract (Exhibit W. E. S. 1). The arbitration which was duly held, resulted in an award being made by the arbitrators appointed by the plaintiffs and defendants, respectively, in the plaintiffs' favor, whereby an allowance was made to the plaintiffs on the price of the said 500 bales, &c.' B. E. 49.

"V. The trial court erred in finding that there was not sufficient evidence before the court to sustain the allegations of plaintiff.

"VI. The trial court erred in deciding the issues in the case in favor of the defendant and against the plaintiff."

JOHNS, J.:

This action is founded upon an alleged written contract which the plaintiff claims was executed in London on April 1, 1921, by and between it and the defendant, acting by and through its authorized agent, and an alleged copy of which is in the record, and purports to have been executed by H. Marchant, now deceased, who was then in London, and who, the defendant admits in its own testimony, was at that time the London agent of the defendant in the selling of its hemp.

In the very nature of things, an agent cannot sell hemp in a foreign country without making some kind of a contract, and if he had power to sell, it would carry with it the authority to make and enter into the usual and customary contract for its sale.

As we analyze the evidence, Marchant was the London agent of the defendant, and in the ordinary course of business, executed the contract known in the record as Exhibit A, for and on behalf of the defendant, as its agent, and as its act and deed, and, for such reason, the defendant is bound by the contract. This is confirmed by the further fact that the defendant undertook to carry out and perform the terms and provisions of the contract, and, by and under its terms, to ship and deliver the hemp, drew the draft, and took and accepted the money for its payment.

We are clearly of the opinion that the contract in question is valid and binding upon the defendant, and that Marchant, as the agent of the defendant, not only had the authority to make and enter into it for and on behalf of

the defendant, but as a matter of fact the contract was legally ratified and approved by the subsequent acts and conduct of the defendant. It is very apparent that the contract was executed in the ordinary course of business, and that in executing it, Marchant was acting within the scope of his authority as the agent of the defendant. It will also be noted that under its terms and provisions, the defendant was to deliver the hemp in London.

Clause 18 of the contract provides:

"Arbitration.—Any dispute arising out of this Contract, or in any way relating to it or to its construction or fulfilment, shall be referred to Arbitration in accordance with the By-Laws of the Manila Hemp Association endorsed hereon, which shall be deemed to form part of this Contract."

Clause 4 of the By-Laws of the Manila Hemp Association provides:

"All questions and matters referred to arbitration pursuant to the annexed contract shall be referred to the arbitration of two Members or qualified Nominees or Associate Members of the Manila Hemp Association, buyer and seller each nominating one, and in case such arbitrators are unable to agree, then to an umpire who shall be appointed by the said arbitrators; but in the event of their not appointing an umpire before proceeding with the reference and within one week of the date of their own appointment, then to an umpire who shall be appointed, at the request of either of the parties to the dispute, by the Chairman, Vice-Chairman or acting Chairman for the time being of the Manila Hemp Association."

Provision is then made for the manner of proceeding should either party fail to appoint an arbitrator, and for an appeal on certain specified conditions.

Clause 5 of the By-Laws provides:

"Awards by Arbitrators shall be made out on the official form issued by the Association, and shall be valid, notwithstanding both arbitrators have not signed the same at the same time and in the presence of each other." And clause 8 provides that:

"Appeals to the Committee of the Association may be heard before a meeting of all or any four or more of the Members of such Committee."

Clause 11 provides:

"The evidence and proceedings upon arbitrations or appeals may be taken in a mercantile way, without regarding legal technicalities respecting evidence."

Clause 12 provides:

"Awards of the Committee on appeals shall be signed either by the Chairman, Vice-Chairman, or acting Chairman of the Association for the time being."

Plaintiff alleges that on the arrival in London of the hemp in question, it was not in sound merchantable condition, and that it was not of the grade specified in the contract. For such reason, it demanded an arbitration under the provisions of the contract. That an arbitration was had, and that it made findings as alleged in the complaint, and that the defendant, through its London agent, accepted and ratified the award of the arbitrators, and in legal effect, plaintiff seeks to recover from the defendant on the findings and the award made by the arbitrators.

It is clear that under the contract, and upon the proof in the record, plaintiff was legally entitled to an arbitration. It is equally clear that, if an arbitration was had and held in the manner and form provided by the contract, and that the arbitrators made findings, and based thereon made the award, as plaintiff alleges, plaintiff in this action would be entitled to recover from the defendant the amount found due and owing by the arbitrators, subject only to the legal right, and under a proper plea, of the defendant to defend upon the ground of fraud or mistake in the

arbitration. But in an action to recover founded upon the award of the arbitrators, the plaintiff must both allege and prove, by competent evidence, that the defendant had notice of the motion of the plaintiff to arbitrate; that the arbitrators were selected in the manner and form as provided for in the By-Laws of the Manila Hemp Association; that the arbitrators met and performed their duties, and made and presented their findings, based upon which, they made and signed their award; and that the defendant was either legally a party to the arbitration or that it ratified and approved the arbitration after it was made. Upon all of such questions, there is a failure of proof. There is no competent evidence that arbitrators were ever selected, as the By-Laws provides, who they were, or that they ever met in the discharge of their duties, or of the time and place of their meeting, or who was present. Neither is there any competent evidence that the arbitrators ever made or signed any findings. Neither is there any competent evidence that the defendant was ever notified of the proposed arbitration, or that it took part in it, or that it ever ratified or approved the alleged findings. The proof of an arbitration should conform to the spirit and intent of the By-Laws of the Manila Hemp Association.

Under the By-Laws, for certain specified reasons, either party has a legal right to an arbitration, and each person has a legal right to select his own arbitrator, and it is the duty of the person desiring an arbitration to notify the adverse party, so that he can select his own arbitrator and be present or represented in the arbitration, if he sees fit to do so. After the arbitrators have been selected and a hearing is held and the investigation made, it is then the duty of the arbitrators to make their findings, based upon Which they make their award, which should be in writing. The only competent evidence of all of such matters is the finding and award which is made by the arbitrators. In other words, where a person seeks to recover a judgment upon the findings and award of arbitrators, he must both allege and prove that all of the conditions precedent, and that the necessary legal steps were taken to have an arbitration, and submit to the court either the original or an authenticated copy of the findings and the award of the arbitrators, or in the absence of such preliminary proof, he must both allege and prove that the findings and award of the arbitrators have been ratified and approved by the adverse party.

There is no evidence of any one of those facts in the record. It is true that the witness Sibley on behalf of the plaintiff testified that: "The defendants, by their duly authorized attorney, Francis Adams, accepted and approved of the award." That is not proof of any fact. It is nothing more than the legal opinion of the witness. The question as to whether the defendant "accepted and approved of the award" is one for the court to determine from the actual facts as to how, when and in what manner the defendant "accepted and approved of the award." What was said and done, by whom it was said, and when and to whom it was said, and if it was in writing, the writing should be produced. Upon the proof of the actual facts, it would then be for the court, and not for the witness, to say whether or not the defendant "accepted and approved of the award."

In the final analysis, where, as in this case, the plaintiff seeks to recover upon the findings and the award of arbitrators, before it can recover, it must both allege and prove a substantial compliance with all of the material provisions of the By-Laws of the Manila Hemp Association, and without such proof, it is not entitled to a judgment upon the findings and award of the arbitrators.

If it be a fact that the alleged findings and award of the arbitrators was made in a substantial compliance with such "By-Laws," and competent proof of that fact is submitted to the court, plaintiff would then be entitled to judgment as prayed for in its complaint. In such a case, the award of the arbitrators could only be modified or set aside for a mistake apparent on the face of the record, or upon the ground of fraud in the arbitration, both of which must be alleged in a proper plea and proven as any other fact, which could not be done under a general denial.

Upon a mistake of fact, Corpus Juris, volume 5, p. 182, says:

"Although an award cannot be avoided on account of a wrong conclusion, drawn by the arbitrators from the facts before them, which conclusion amounts to a mere mistake of judgment, a plain misconception of the facts

submitted, by reason of which it is made to appear that the arbitrators must have rendered a different decision had they proceeded in view of the true state of facts, about the existence of which there could be no reasonable question, may constitute a ground for avoiding the award. * * * "

Upon the question of fraud, on page 187, the author says:

"It is ground for setting aside an award that it was obtained by the fraud, imposition, or other undue means employed by a party to the arbitration, or his agent, * * * " And again on page 189:

"Fraud, corruption, or misconduct of the arbitrators is ground for setting aside the award, especially where one of the parties participates therein. And, for obvious reasons, it has been held that the rule applies, although the submission provides that the award shall not be subject to exception or appeal, or shall be final or conclusive. * * * "

As to the operation and effect of an award on the merits, the same author, on page 160, says:

"As between the parties and their privies, an award is entitled to that respect which is due to the judgment of a court of last resort. It is in fact a final adjudication by a court of the parties' own choice, and, until impeached upon sufficient grounds in an appropriate proceeding, an award which is regular on its face is conclusive upon the merits of the controversy submitted, and it is not for the courts to otherwise inquire whether the determination was right or wrong, for the purpose of interfering with it. The court possesses no general supervisory power over awards, and if arbitrators keep within their jurisdiction their award will not be set aside because they have erred in judgment either upon the facts or the law. * * * It is the general rule that a valid award operates to merge and extinguish all claims embraced in the submission. Thereafter the submission and award furnish the only basis by which the rights of the parties can be determined, * * * ."

This case involves the application and construction of the By-Laws of the Manila Hemp Association, is important to the hemp industry, and is one of first impression in this court.

In the interest of justice, and so that the case may be tried and decided upon its actual merits, the judgment of the lower court is reversed, and the case is remanded, with leave to the plaintiff to submit competent evidence of the arbitration and the findings and award of the arbitrators, and that the arbitration was made in a substantial compliance with the By-Laws of the Manila Hemp Association, and with leave to the defendant, in its discretion, to amend its answer, and to both allege and prove that the arbitration was fraudulent or that the arbitrators made a mistake, which is apparent on the face of the record. Neither party to recover costs. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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