

CASTLE BROTHERS, WOLF & SONS, PLAINTIFFS AND APPELLEES, VS. GUTIERREZ HERMANOS, DEFENDANTS AND APPELLANTS

G.R. No. 4231. April 01, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

CONTRACT.—From the Court of First Instance of Manila. Evidence deemed sufficient to show a contract by the defendants to furnish the plaintiffs 500 bales of "good current Manila" hemp. Judgment for the plaintiffs affirmed.

Per Willard, J.

For appellants: Hartigan, Rohde & Gutierrez.

For appellees: Jos. N. Wolfson.

DECISION

We see nothing in this case but a pure question of fact.

Hemp comes from the provinces to Manila packed in bales which bear as marks combinations of letters which may indicate the ownership of the hemp and the district from which it came. The marks in question in the case at bar are the following:

B.

B.

G.H.

R.C.

G.H.

G.H.

L.

C.

L.

T.

The evidence clearly established the contention of the defendant that these marks and other marks indicate the quality of hemp which is contained in the bales. It also clearly supports the other contention of the defendant that the hemp is as a general rule sold in Manila by the marks upon the bales and that when buyers purchase bales with certain marks thereon they expect to find therein hemp of a certain quality.

The evidence, moreover, shows that hemp is also classified in Manila in another way and that there are known to the trade several current", "midway", "fair current: and others; and that sales can be and are made with reference to these grades without considering the marks at all.

Whether the hemp is sold by the marks or by the grades above-mentioned, the buyer always has the right to inspect it for the purpose of seeing if the quality of the hemp corresponds to that indicated by the mark, when the sale is made with reference to the mark, or if it is sold with reference to one of the other grades such as "fair current", to see if it is equal to that grade.

It seems that the quality of the hemp indicated by the mark is or may be reduced to the grades above-mentioned, as for example, the mark "G.H." is supposed to

L.

grade as, or somewhat above "midway". The mark "R.C." is also supposed to grade as or somewhat above "midway".

L.

That the plaintiff on the 17th of September, 1906, closed a contract with the defendant by which the defendant agreed to sell the plaintiff 500 bales of hemp at 24 pesos a picul, is admitted by both parties. The dispute between them is as to whether the hemp which was sold was to be "good current Manila" as claimed by the plaintiff or whether it was to be of the quality indicated by the four marks above-mentioned. It was not claimed by the defendant below, and is not claimed here by it, that the hemp indicated by those marks is equal to the grade "good current".

The contract was a verbal one and was made in the office of the plaintiff, between Mr. Knight, its representative, and Don Leopoldo Criado, the representative of the defendant. Mr. Knight testified that he bought, and Don Leopoldo Criado agreed to sell him, 500 bales of "good current Manila" hemp. That while some mentioned of marks was made, he said he could not accept those marks unless they turned out to be up to the quality of "good current Manila". Don Leopoldo Criado testified that the phrase "good current" was never mentioned in the conversation; that he stated to Mr. Knight that the defendant had 554 bales of the four marks mentioned, and that of those he sold 500 bales. The testimony of Mr. Knight is corroborated by the testimony of Mr. Higginbotham, who was his assistant in the office who heard the conversation, and who states that there was a positive agreement on the part of Don Leopoldo Criado to furnish 500 bales of "good current Manila". These three witnesses are the only ones who testified as to what the contract. was.

There is other evidence in the case, however, which in our opinion, and in the opinion of the court below, corroborates the testimony for the plaintiff. On the 13th of September, 1906, the plaintiff received from the Portland Cordage Company of Oregon a telegram asking the plaintiff to make them an offer for 500 bales of good current Leyte hemp by the September or October steamer. On the same day the plaintiff telegraphed the Portland Cordage Company that they could not furnish Leyte hemp but they offered 500 bales of "good current Manila" hemp for the September or October steamer, at the price of 45 pounds. Mr. Knight testified that before sending this telegram he saw Don Leopoldo Criado and that the latter told him that they could furnish 500 bales of "good current Manila" hemp at 24 pesos a picul and that relying upon such information he made this offer. On the 17th day of September, the plaintiff received a telegram from the Portland Cordage Company accepting its offer of 500 bales of "good current Manila" hemp. Don Leopoldo Criado denies that he ever had any conversation with Mr. Knight in regard to this ever had any conversation with Mr. Knight in regard to this matter on the 13th of September, but the fact that these telegrams were sent and received was undisputed. Both Mr. Knight and Mr. Higginbotham testified that when the contract was closed on the 17th day of September the telegram of acceptance had just been received from Portland and was shown to Don Leopoldo Criado. The latter denies this and says that he never saw the telegram until sometime after.

Other evidence corroborative of the claim of the plaintiff is found in a letter written by Higginbotham to Knight on the 19th day of September, two days after the making of the contract. Higginbotham and Don Leopoldo Criado inspected two bales of each of the four marks upon the 18th, Mr. Knight being then sick and away from his office. He also was absent therefrom on the 19th. In this letter Higginbotham says: "In reference to Gutierrez' hemp which I inspected yesterday morning, I saw the following marks which I make (here follows a statement of the condition of hemp found in each bale.) I saw two bales of each mark. I do not consider it is a fair tender against "Manila good current". I have had the bales separated in our bodega so as you can look at same when fit again. Leopoldo does not agree to above classification but says that he will wait to see you." Higginbotham at the trial testified to the same effect. That Higginbotham understood on the 19th of September that the plaintiff had bought good current Manila hemp is proven by this letter. If he thought so on the 19th, he must have thought so on the 17th, when the contract which he was a witness was made.

The court below found upon the facts in favor of the plaintiff and we think that the evidence sustains such finding.

Of the 500 bales delivered, the plaintiff accepted and paid for 201 bales and no question as to these bales is made in this case. It refused to accept 299 bales on the ground that it was not good current Manila hemp, called upon the defendant to furnish 299 bales of that quality and notified it that on failure to do so it would buy the same in the market and charge the increased cost to the defendant. The defendant refused to substitute other bales and the plaintiff bought 299 of good current Manila hemp at 28.50 pesos a picul, 4.50 pesos more per picul than the price at which the defendant had agreed to furnish them that quality of hemp. The loss to the plaintiff was therefore 2691 pesos and to recover that sum this action was brought.

The judgment of the court below in favor of the plaintiff for that amount, is affirmed, with the costs of this instance against the defendant.

DISSENT

CARSON, J.:

As I understand it, we are all agreed that the evidence of record clearly establishes the contention of the defendant that it is the custom of hemp dealers in Manila, to buy and sell hemp in accordance with certain well known and

standard "letter marks," reserving always, and of course, the right to examine the hemp furnished to see that it comes up to the classification represented by these marks.

Plaintiffs allege that in making the particular purchase in question, they contracted for the delivery of hemp of a standard of classification known as "good current, Manila" and not for hemp of the quality indicated by the "letter marks" as furnished by the defendants.

I do not think that the evidence of record in support of plaintiffs' allegations is sufficient to rebut the testimony of the witnesses of the defendant, supported as it is by the presumption, that unless it clearly, definitely and positively appears that there was a contrary stipulation, the sale on this occasion was made in accordance with the customary and usual practice of hemp merchants in similar transactions in the same market.

I take it that the plaintiffs intended and desired to purchase "good current, Manila", and that when they contracted with plaintiffs they believed that the marks under consideration indicated a quality of hemp which would serve as a good tender on a demand for such hemp, but I do not think that it affirmatively appears that there was an agreement, a meeting of minds, whereby it was understood that on this particular occasion the usual and customary method adopted by hemp merchants in Manila in buying and selling hemp should be set aside, the defendant assuming the unusual risk of guaranteeing not only that the hemp delivered would come up to the local "letter mark" standard but also to the export "good current" standard. I do not find a particle of evidence tending to prove that there was any special reason or inducement for the defendants' undertaking this special risk on this occasion, and I do not think that they ever intended or agreed to do so.

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