

CHANG YONG TEK, PLAINTIFF AND APPELLEE, VS. GENEROSA SANTOS, DEFENDANT AND APPELLANT.

G.R. No. 4386. February 24, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that on the 15th day of January, 1904, and the 25th day of September, 1905, the plaintiff sold to the defendant a certain quantity of tobacco, amounting in all to the sum of P894. The defendant does not deny the purchase of the tobacco in question nor the amount which was originally promised to be paid for the same. The plaintiff alleges that P442 of the said amount was to be paid at the end of January, 1904, and that P452 of said amount was to be paid at the end of the month of September, 1905. No part of the said amount of P894 having been paid, the plaintiff commenced an action on the 24th of January, 1907, for its recovery.

The only defense presented by the defendant was that the tobacco delivered by the plaintiff was not of good quality. The defendant does not allege, however, that it was not of the quality purchased nor that the plaintiff delivered a different kind or quality of tobacco than that purchased. Neither does the defendant allege that she intended to purchase or did purchase a particular quality of tobacco and that that quality was not delivered. Neither does the record show that the defendant had made any complaint to the plaintiff concerning the quality of the tobacco or that it was not the kind of tobacco which she had purchased, until after the present action had been commenced. The defendant admits that she had sold the tobacco in question.

Nearly three years had elapsed from the time the defendant purchased the tobacco in question until the time the present action was commenced. The record does not disclose when the defendant sold the tobacco in question. The defendant does not allege nor attempt to prove that she did not have an opportunity to examine the tobacco delivered, for the purpose of determining its quality. Neither does the record disclose that the plaintiff made any false representations with reference to the quality or kind of tobacco sold. Neither does the defendant allege or attempt to prove that the tobacco in question contained any hidden defects which might not have been discovered upon the slightest investigation. There is no attempt to show that the plaintiff undertook to warrant the quality of the tobacco. In the absence of an express warranty, a vendor of merchandise only warrants;

First. The legal and peaceable possession of the thing sold; and

Second. That there are no hidden faults or defects therein. (Art. 1474, Civil Code.) Moreover, it appears from the record that the defendant did examine the tobacco in question at the time of the sale by opening many of the bundles and examining the contents thereof.

It not being proven that the plaintiff made any warranty or any misrepresentations with reference to the quality of the tobacco in question, and it having been proven that the defendant had an opportunity to and did examine the tobacco in question at the time of purchase and not having made any objection whatever until after a lapse of more than three years and not then until after an action had been brought, and making no objection whatever as to the price agreed upon, nor as to the quantity of the tobacco delivered, in our opinion she should be held liable for

the payment of the amount agreed upon.

The judgment of the lower court is hereby affirmed with costs. After the expiration of twenty days let judgment be entered in favor of the plaintiff and against the defendant for the sum of P894, with interest at the rate of 6 per cent from the 23d day of January, 1907, with costs, and ten days after the date of the judgment let the record be remanded to the court below for execution. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.

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