

LEON JUDA, DOING BUSINESS UNDER THE FIRM NAME OF JUDA BROTHERS, PLAINTIFF AND APPELLANT, VS. MRS. E. O. CLAYTON AND E. O. CLAYTON, HER HUSBAND, DEFENDANTS AND APPELLEES.

G.R. No. 9287. December 04, 1914

Ponente: CARSON, J.

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CARSON, J.:

This action was brought by the plaintiff to recover the sum of P1,797.80, a balance alleged to be due on account of merchandise sold and delivered to the defendant. Plaintiff is a wholesale merchant of San Francisco, California, dealing in ladies' wearing apparel, and the principal defendant, Mrs. E. O. Clayton, was at the time of the purchase of the goods in question engaged in the business of retailing ladies' wearing apparel in the city of Manila.

From an examination of the account rendered by the plaintiff it is evident that the alleged balance claimed to be due from the defendant is substantially the amount charged for certain goods which it is admitted were shipped by the plaintiff to the defendant in Manila, and by her returned as unsatisfactory and unsalable.

Defendant insists that she is entitled to have the value of the goods returned credited on her account, while plaintiff denies that she had any right to make such a return, or to have credit therefor. If defendant is entitled to a credit on her account for the value of the goods returned by her, the judgment of the trial court dismissing the complaint must be sustained, it appearing that the amount of the credit to which she would thus be entitled is slightly in excess of the amount of the balance claimed under the account.

The principal and, indeed, the only real question for determination is, therefore, whether under all the circumstances as they appear from the record, defendant had the right to return goods shipped to her on her order by the plaintiff but which did not meet with her approval, and to receive credit therefor on her account.

There does not appear to have been any express understanding in this regard at the time when the account was opened in December, 1910. The record, however, clearly discloses that on more than one occasion defendant did in fact return certain goods shipped her by the plaintiff which did not meet with her approval and which she considered unsuited to her retail trade. And it further appears, that up to the time of the return of the particular shipment of goods in question in this action, plaintiff received and accepted goods returned by the defendant and credited her account with the amount originally charged thereon for the goods thus returned.

On August, 1911 the defendant wrote to the plaintiff as follows (Exhibit B): "I was greatly disappointed in the special lot of thirty dresses which you forwarded by mail in response to my cable. I am returning by this same mail twenty-one gowns. I looked these over carefully half a dozen times, and conscientiously tried to make myself believe I could sell one or two out of this lot, and I am certain that it is absolutely impossible to do so."

The letter then continues to explain in considerable detail the demands of her retail trade in Manila, and after giving some suggestion as to the character of goods wanted, continues: "I trust, Mr. Juda, that you now thoroughly understand my position, and in future shipments anything the least bit tawdry or cheap appearing will

be cut out."

Plaintiff answered this letter under date of September 16, 1911, as follows (Exhibit 2): "The goods returned checked up correctly, and we have placed the amount to your credit. At the time we made you this mail shipment we wrote you that under these conditions we did the very best we could, and have hoped that the line's {sic, lion's) share of this particular shipment will meet your approval.* * * * Again we say to you if from time to time you will write us a few lines stating your wants, it will materially assist us in getting out for you merchandise which will be profitable for you and save us other returns."

In another letter dated August 21, 1911, plaintiff said: "For such of our merchandise as you are returning to us, we will mail you credit memorandum on the next steamer, and will deduct the amount of this credit from your, next purchase."

In the month of September, 1911, defendant left Manila for San Francisco and arrived there early in the month of October, bringing with her some of the articles received from the plaintiff in shipments made in the months of June and July, which she herself returned personally to the plaintiff while in San Francisco, receiving due credit therefor on her account. At that time there was some conversation between the parties in regard to the practice of defendant in making returns of shipments which were not satisfactory to her, and she having made a personal selection of a new shipment made at that time, it was then agreed that she was not to have the right to make any returns upon that shipment.

We think that the correspondence between the parties, taken together with their conduct in connection with the returns made on several occasions by the defendant, clearly discloses that up to the time when they met in San Francisco late in the year 1911, defendant believed that she had a right to return goods shipped to her by the plaintiff which she did not regard as satisfactory or appropriate for her trade. We think, too, that plaintiff, by acquiescing in the action of the defendant in making these returns and by allowing her a credit on her account for the value of the goods thus returned, confirmed her in her belief as to her right in this respect. In some of the letters written by plaintiff to the defendant we find regrets that goods were returned to him, but in none of them does he seem to question the right of the defendant to pursue the course adopted by her.

Thus in the letter above quoted of September 16, 1911, he says: "We did the very best we could, and have hoped that the line's (lion's) share of this particular shipment will meet your approval."

And then again he seems to have anticipated the possibility of other "returns," or why should he have written to the defendant to this effect: "Again we say to you that if from time to time, you will write us a few lines stating your wants, it will materially assist us in getting out for you merchandise which will be profitable for you and save us other returns,"

Before leaving for the United States in the month of September, 1911, the defendant directed the manager of her retail establishment in Manila to select from the June, July, and August shipments from the plaintiff any articles which appeared to be unsatisfactory or unsalable, and return them to the shipper. In accordance with her instructions her manager selected for return goods to the value of \$933.75 (P1,867.50) and forwarded them to the plaintiff in San Francisco. The question before us is as to defendant's right to reject and return these goods and to receive credit therefor. Most of these rejected goods were included in the August, 1911, shipment, which does not appear to have arrived in Manila at the time when the defendant set sail for the United States. A few of the articles, however, seem to have been selected from the June and July shipments which were in stock at that time.

The defendant testified that on her arrival in San Francisco she advised the plaintiff that in addition to the goods she had brought with her there would be another shipment of returns later on for which she desired credit, and that

plaintiff at that time made no objections on that account. Plaintiff denies positively that he received any such information, and testified that the first intimation he received in regard to the return of these goods was on January 24, 1912, the day following the departure of the defendant on her return to Manila.

Of course if defendant's claim that she had advised the plaintiff when in San Francisco as to the fact that she had directed the return of these goods, and that plaintiff at that time made no objection to her action in this regard, were satisfactorily established, there would be nothing left of the case, and there could be no question of her right to be credited with the amount of the goods thus returned. We are strongly inclined, however, to doubt the claim of the defendant that she informed the plaintiff that she had arranged for the return of these goods. It appears that they were shipped to her agent in San Francisco for delivery to the plaintiff, and that they arrived some little time before her departure on her return trip to Manila. She admits that although she knew that they had arrived she said nothing to the plaintiff in regard to their arrival in the interviews she had with him not long before she left San Francisco ; and from all the evidence it is clear that when the goods were delivered to the plaintiff a few days after her departure, he was taken by surprise and had no idea that the defendant had in fact directed the return of so large and substantial a part of the August shipment. It may be true that the defendant told the plaintiff in San Francisco that she had directed her agent in Manila to return some of the articles received after her departure, but it is very clear that she did not intimate to the plaintiff that she expected, to return a substantial part of the August shipment, or that the value of the goods thus returned would be much greater in proportion to the shipment made than the value of the goods which she had brought to be returned in person. From her conduct while in San Francisco, and having in mind the unexplained delay in the delivery of the goods thus returned to the plaintiff after their arrival in the hands of her agent in San Francisco, we are strongly inclined to believe that she was not wholly frank with the plaintiff in any references she may have made to these goods, and that she was anxious to close up her business with the plaintiff and to get out of San Francisco on her way back to Manila before he learned the full extent and nature of this return shipment. Under all the circumstances as developed by the record we accept as true the plaintiff's denial of all knowledge that such a shipment had been made by the defendant until the goods were actually delivered after her departure for Manila, and we are satisfied that he did not expressly agree to receive them and to credit them on account at the time when defendant claims that she advised him of the fact that they were en route, during her interview with him in San Francisco.

These goods, however, had actually been shipped from Manila prior to the date of the interview between plaintiff and defendant in San Francisco. In determining the right of defendant to make the returns and to have them credited on her account we must look, in the absence of an express agreement, to the conduct of the parties and the nature of their business relations prior to and at the date of their return. From what has been said we think that there can be no doubt that defendant had a right, acquiesced in and assented to by the plaintiff, to make returns of merchandise shipped her by the plaintiff which she believed to be unsuited for the business which she conducted in Manila. Doubtless this right to make returns was not an absolute unqualified right to return any or all goods received, and there being no express agreement in regard thereto, defendant could only exercise the right in a reasonable manner; but there is nothing in the record which would justify us in holding that in making the particular return in question she or her agents acted arbitrarily or unreasonably. It is true that prior to that date the returns made by her had never amounted to anything like as much in value as did the return in question, but it does definitely appear that on one occasion she returned twenty-one out of a lot of thirty dresses shipped her. The question as to whether a return of goods included in any particular shipment from the plaintiff was reasonable and in accordance with the implied agreement arising out of the mercantile relations of the parties, necessarily depends upon the amount of the particular shipment which was suited to defendant's retail trade in Manila. In regard to the shipment in question we have no evidence of record, other than the fact that defendant's manager in her absence rejected these goods, upon which to base a conclusion as to the reasonableness of her conduct in this

regard. It may be that a part or all of these goods were improperly returned, and that under a fair construction of the implied agreement between the parties they should not have been returned, but there is nothing in the record upon which to base a finding to that effect. The lack of an express agreement as to the circumstances and conditions under which such returns were to be made, practically left the plaintiff in the hands of the defendant, and if he has any just cause for complaint, it would seem that his inability to establish the loss or damage suffered by him must be attributed to the manifestly unbusinesslike arrangement under which he entered into and carried on mercantile relations with the defendant.

Plaintiff undertook to rebut defendant's claim of a right to make returns of unsuitable goods by showing that defendant's mother, who resides in or near San Francisco, acted as her agent in passing upon and approving all shipments made by him. We are of opinion that the evidence does not sustain a finding that defendant's mother was her agent for that purpose, with authority to impose upon defendant an obligation to accept all goods approved by her. We think that the evidence sufficiently establishes that while plaintiff consulted with defendant's mother as to the goods forwarded in some shipments, he was not bound to do so. Indeed, it was only when it suited the convenience of the parties that she conferred with the plaintiff, and there was no agreement between the parties binding the plaintiff to ship only such goods as met with defendant's mother's approval. Moreover, we think the correspondence and the conduct of the parties sufficiently establishes the right of defendant to make returns of unsuitable goods, whether her mother had or had not approved the selection made by plaintiff.

It is contended that judgment should be rendered in favor of the plaintiff for the amount claimed in the complaint as a balance due on an "account stated." It appears that an account on which no credit was made for the return of the goods in question and which showed a balance due in the amount as claimed in the complaint, was mailed by plaintiff in San Francisco to defendant in Manila, and that she did not forthwith reply thereto, returning and repudiating the account and denying her indebtedness. It is urged that her silence should be held to be an implied admission of the correctness of the account, and an acquiescence in the statement of the balance due.

We cannot agree with these contentions. An account stated is an agreement between persons who have had previous transactions, fixing the amount due in respect of such transactions. The essential element of such an account is the acknowledgement by the parties of the balance shown to be due on the account, or of the truth and accuracy and completeness of the items therein set forth. Before an account can be given the binding effect of an account stated it must affirmatively appear that the parties did in fact reach an agreement as to its correctness. Assent as to the correctness of an account rendered may fairly be presumed and is presumed, especially between merchants, from the conduct of the party to whom the account is rendered. His silence after receipt of the account without raising any objections thereto within a reasonable time raises a fair presumption of his acquiescence, in the absence of proof of circumstances from which counter-inferences may be drawn. But there is no arbitrary rule of law which renders an omission to object in a given time equivalent to an actual agreement or consent to the correctness of the account, and the presumption of acquiescence may always be rebutted by evidence of facts and circumstances in a particular case from which a counter-inference must be drawn.

In the case at bar defendant had returned to plaintiff goods to the value of P1,865.50, for which she claimed the right to a credit on her account. Plaintiff, although he acknowledged the return of these goods, positively denied the right of defendant to have them credited on her account. The matter was in dispute between them. Plaintiff well knew that defendant insisted on her right to have these goods credited on her account. Defendant had done nothing to lead him to believe that she had waived her claim to a credit. On the contrary both parties were fully advised that defendant claimed and plaintiff denied the right to a credit of the value of the goods. No settlement of this difference had been reached by the parties when the account was rendered. The goods rejected and returned by the defendant must be presumed to have had some value, and plaintiff well knew that he could not retain them

and at the same time decline to give credit for at least their actual market value in the condition in which they were received by him. No reference whatever was made to these goods in the account actually rendered. It is clear therefore that the failure of defendant to make an express repudiation of the account rendered under these conditions cannot fairly be held to be an acquiescence in the account as a correct statement of the status of the mercantile relations between herself and the plaintiff, nor an implied admission of its correctness and a waiver or abandonment of her claim on account of the goods to the value of P1,865.50 which she had returned to the plaintiff.

The judgment entered in the court below should be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Moreland, and Araullo, JJ., concur.

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