

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of J. Barre Johnston & Co. v. Oldham, from the Court of Appeal of New Zealand; delivered 10th May 1895.

Present:

The LORD CHANCELLOR.

LORD WATSON.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[Delivered by Lord Hobhouse.]

In this case the Plaintiffs who are merchants in Sydney contracted with the War Department of the Netherlands India, to furnish large quantities of tinned beef under certain conditions. The contract itself is not set out in the Record, but the important parts of it, the conditions of tender, are contained in a document marked "A."

At the same time the Defendant, who is a meat preserver at Patea in New Zealand, contracted to supply the same quantities to the Plaintiffs at Sydney "in strict accordance with the specification and requirements of the attached conditions of tender." This contract is document "B" in the Record. The attached conditions are those of Contract "A."

Under some of those conditions the War Department made claims against the Plaintiffs by which they incurred loss. They sue the Defendant to make good that loss; and the

question is, whether the terms of Contract "B" are such as to subject the Defendant to all the conditions of Contract "A."

There are several conditions relating to the quality and quantity of the beef, the sizes and marking of the tins, the construction of the packing-cases, and the times and places of delivery and shipments. The Defendant does not dispute that he was bound by Contract "B" to supply the Plaintiffs in such manner as to answer, or to enable them to answer, all the conditions of this class, and he alleges that he has done so by delivery of the meat at Sydney. The claim of the Plaintiffs has its origin in other conditions brought into action after that delivery. The two principal of these are headed "Guarantee" and "Arrival in Netherlands India."

By the former of these two conditions the contractor is bound to guarantee the good quality and soundness of the meat contained in the tins for the period of twelve months, to date from the dates of the bills of lading of the several shipments, as well as the quantity of meat contained in the tins, and the number of tins contained in each case.

By the latter the meat is to be examined on arrival in the Netherlands India, or whenever during the aforesaid period of twelve months it may be required for consumption. Upon discovery of defects in quality or quantity during that period, reports and statements are to be forwarded to the Netherlands Consul-General, who may give notice to the contractor, claiming compensation. And the contractor is bound to accept such reports and statements as absolutely binding and conclusive on him.

The shipments mentioned in Contract "A" are to take place either at Sydney or at Melbourne. Contract "B" was made on the 15th April 1890 at Patea in New Zealand. After

referring to Contract "A" as above mentioned, and specifying the quantities to be supplied, it contains other conditions operative between the Plaintiffs and the Defendant. One of them is, that five per cent. shall be deducted by the Defendant from all invoices, against claims that may arise, and that such abeyance moneys shall be adjusted at the expiration of six months from the date of shipment, less any claims to hand at that period. Another is, that payment shall be made partly in cash against some shipments, and partly in promissory notes against other shipments, at dates the longest of which is six months after the shipment.

The case has been decided upon issues of law which the Court directed to be argued before the trial. Of these the two which are now material are as follows :—

"(a) Is the Defendant bound by the clause marked 'Guarantee' to guarantee the good quality and soundness of the meats for twelve months ?

* * * * *

"(c) Is the Defendant bound to accept the Report or Reports and Statement or Statements mentioned under the heading " 'Guarantee' in the Contract 'A,' as absolutely binding and conclusive on him as mentioned under such heading ?"

In issue (c) it seems that the heading is wrongly stated, but the mistake is not material.

Mr. Justice Richmond, before whom the cause was first heard, answered both these questions in the negative. On appeal three Judges agreed with him and one was of a contrary opinion. In the present appeal it is contended that both the Courts below were wrong, and that the questions should be answered in the affirmative.

For the Plaintiffs it is broadly contended that the Defendant bound himself to supply meat that should answer every condition of Contract "A," including the condition of absolute satisfaction to the War Department at all times within twelve months after each shipment. On this the observation occurs that, so far as the

Plaintiffs are concerned, the Defendant's contract is performed by delivery of beef in proper form quantity and quality at Sydney. At that point the Defendant's control over the goods ceases. There are no stipulations as to the treatment of them by the Plaintiffs in Sydney, nor during the transit from Sydney to Java. Yet if they were damaged during that time, though it might be by the Plaintiffs' neglect, the Defendant would, according to the theory of his absolute guarantee to the War Department, be liable for the loss, or at best could only escape by undertaking the difficult burden of proving that the damage was caused by the Plaintiffs. Such a contract would be one of a very onerous kind for the Defendant, and though not incredible, is at least so unusual and unlikely as needs to be expressed in clear language before it can be accepted by a Court of Justice.

Now the language of Contract "B" is not such as to necessitate the Plaintiffs' inference from it. If it had been intended that the Defendant should take all the risks to which the Plaintiffs had subjected themselves, that might have been expressed in simpler words than have been used. Contract "B" does not say that all the conditions of Contract "A" are to attach. It says that the Defendant shall supply beef in strict accordance with the specification and requirements of the conditions. "Specification" is a word well adapted to express the quantities and times of delivery and shipment, and modes of tinning and packing, which are specified with great particularity. The word "requirements" may be superfluous, or it may have been thought more fit than the word "specification" to express such a requirement as that the beef should be without bone, and with as little fat as possible. Whatever may have been the precise shade of meaning intended by the draftsman, the words literally construed import something less than the totality of the conditions,

and point rather to such "specification" and "requirements" as relate to the thing which the Defendant contracted to do, viz., to supply beef for delivery and shipment in Sydney. Neither term is well adapted to express such conditions as are the present subject of dispute.

Moreover there are other provisions in Contract "B" inconsistent with the notion that the Defendant was meant to take over Contract "A" with all its burdens and risks. The terms and conditions of payment as between the Plaintiffs and Defendant are different from those between the Plaintiffs and the War Department. Again, though the Defendant is provisionally to deduct five per cent. from his invoices against possible claims, that matter is to be adjusted within six months from the date of shipment, and payments are to be made to the Defendant either at the time of shipment or at the latest six months afterwards. Even supposing that the shipments mentioned are the later ones, viz., those from Sydney, a point which was not decided below, it is difficult to believe that accounts were to be finally settled as between the Plaintiffs and Defendant within six months, if all the time it was intended that the Defendant should under his twelve months' guarantee have liabilities hanging over his head which the War Department might at its discretion enforce against him through the Plaintiffs.

For the above reasons their Lordships think that the Courts below have been right in answering the two questions in the negative, and they will humbly advise Her Majesty to dismiss this appeal. The Appellants must pay the costs.
