

Ernest Kweku Adisi - - - - - *Appellant*

v.

Frans Thomas Dove - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE GOLD COAST COLONY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 13TH APRIL, 1923.

Present at the Hearing :

VISCOUNT HALDANE.

LORD DUNEDIN.

LORD PARMOOR.

[*Delivered by* LORD DUNEDIN.]

In this case Mr. Montgomery has put every point which could be put for the appellant, but their Lordships have no doubt that the view taken by both Courts below was the correct view.

The action is one for payment for cocoa delivered, and there is no question that the cocoa was delivered. A question was raised at one time as to shortage ; but, inasmuch as that is a point that really depended upon the credibility of the evidence and on which there were concurrent findings in the Courts below, it would be impossible for their Lordships to go into any such matter.

The beginning of the negotiations which led up to the contract is contained in a letter from the appellant to F. W. Dove, a brother of the respondent, dated the 22nd November, 1917, which is in these terms :—

“ Please offer 1,000 bags of cocoa delivered Accra station at the rate of 12s. 6d. per load of 60 lbs. weight. The above contract to be filled up not later than Tuesday next. Upon the cocoa being carted to Lighterage beach stores, immediate payment of the cost thereof will be made.”

To that letter a reply was sent on the 23rd November, 1917, which did not constitute an acceptance, but made various suggestions as to modification, and in particular did not at all agree to the suggestion as to payment being made upon the cargo being carted to the Lighterage beach stores. That letter was followed by a letter of the same date from the appellant to F. W. Dove in these terms :—

“ Further to my letter of yesterday, I ask you to supply 2,000 bags of cocoa delivered at Accra railway station at the rate of 13s. and 13s. 6d. per load of 60 lbs. weight, including cost of bags for each 1,000 bags respectively, and that the said quantity of 2,000 bags should reach Accra not later than Thursday next, the 29th instant. Please note that I require only good fermented cocoa, well dried and free from all foreign matter and substance.”

To that letter F. W. Dove replied on the same day as follows :

“ In reply to yours of even date, I accept your offer on the terms and conditions therein stipulated.”

There is no question that those two letters taken by themselves form a firm contract, and upon the face of them, if there was nothing else, they are a contract between the appellant and F. W. Dove, who is the brother of the respondent. But then it was said that although on the letters the contract was made between the appellant and the brother of the respondent, the contract was truly made with the respondent. It does not very much matter whether the view is taken that the contract was truly made with the respondent, his brother really being put forward as a sort of nominee or *prête nom*, or whether the other view, which is probably the more strictly legal one, is preferred, that the contract was made with the agent of a disclosed principal. Both the Courts below have come to the conclusion that the latter is the true position, and certainly it would be very unusual for their Lordships to disturb such a finding unless something very clear could be shown to the opposite effect. If the learned counsel for the appellant had been able to substantiate what he said at first, that the terms of the documents were quite inconsistent with this view, then no doubt there might have been some reason for interfering, but there is nothing in the two letters to which reference has been made which is at all inconsistent with the view of its being a contract with an agent for a disclosed principal, and, accordingly, their Lordships would be slow indeed to interfere with such a finding. Nor, indeed, do they doubt that they would certainly have arrived at the same conclusion from the evidence. That disposes of the main point, but there is a subsidiary point, namely, that this action was premature, because although the cocoa had admittedly been delivered, payment by the terms of the contract was only to be made upon shipment, and the cocoa had not been shipped. Their Lordships think that the letters which have already been referred to displace that view. There is nothing whatever in them about payment upon shipment. On the contrary, the ordinary idea of

a contract for sale is, of course, payment on delivery, and in the initiation of the negotiations here what was proposed was not payment on delivery, but upon the cocoa being carted to the Lighterage beach stores. That proposal was objected to, and upon the objection being taken there was a contract proffered and accepted in which nothing was settled at all about payment, and, therefore, the ordinary result in law will follow, that payment is to be on delivery. It is impossible, therefore, to read into the contract as constituted by those two letters anything about payment being deferred until shipment, and further than that the learned Judges in the Court below have held that there is nothing in the *parol* evidence which in any way varied the terms of the contract, even if it were possible to do so.

There is one further matter which ought to be referred to. It seems that the cocoa not having been at once paid for some doubts arose in the mind of the seller, and he got his brother, who was dealing with the matter, to apply to the appellant that he should in some way have control of the cocoa. Accordingly the appellant, three days afterwards, on the 26th November, 1917, wrote to Mr. F. W. Dove the following letter:—

“ With reference to my letter of 23rd instant, I consent to your having control of all cocoa supplied me by you until you have been paid by me for such supplies.”

What precisely he meant by that it is not altogether easy to see. He may have had some rather hazy legal idea that a letter in those terms constituted a sort of floating charge upon the cocoa. Be that as it may, in answer to that letter, Mr. F. W. Dove wrote to the appellant on the same day in these terms:—

“ On your undertaking of even date that I have control of all supplies of cocoa I make to you until I have been paid, I hereby consent to your hypothecating or ship such supplies for the purpose of making such payments thereof.”

The learned counsel for the appellant strenuously contended that the inference could be drawn from that letter that payment was not to be made until shipment. In their Lordships' opinion no such inference can be drawn. The matter appears to their Lordships to be quite clear. This control, such as it was, having been given, a second letter is written by the appellant, in which he said: “ I am quite willing to relax my control and to allow you to ship in spite of my control and to allow you to hypothecate,” presumably by means of bills of lading and then endorsing the bills of lading, “ in order that you may obtain the money to pay me.” That is equally consistent either with the money being due on delivery or with its being due on shipment, and therefore there is nothing in that letter which alters the clear terms of the contract.

In their Lordships' opinion the appeal fails and should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

ERNEST KWEKU ADISI

vs.

FRANS THOMAS DOVE.

DELIVERED BY LORD DUNEDIN.

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