

CANADA / JUDGMENT

Scotia Flour & Feed Co. v. Strong

[1928] SCR 319**COURT**

Supreme Court of Canada

DECIDED

21 February 1928

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Scotia Flour & Feed Co. v. Strong Collection Supreme Court Judgments Date 1928-02-21 Report

[1928] SCR 319 Judges Anglin, Francis Alexander; Mignault, Pierre-Basile; Newcombe, Edmund Leslie; Lamont, John Henderson; Smith, Robert On appeal from Nova Scotia Subjects Sale Decision Content Supreme Court of Canada Scotia Flour & Feed Co. v. Strong, [1928] S.C.R. 319 Date: 1928-02-21 Scotia Flour and Feed Company (Defendant) Appellant; and L. P. Strong and Another (Plaintiffs) Respondents. 1928: February 20; 1928: February 21. Present: Anglin C.J.C. and Mignault, Newcombe, Lamont and Smith JJ. ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA, EN BANC Sale—Payment—Right to inspection—Condition—The Sale of Goods Act, R.S.N.S.C. 206, s. 35, subs. 2 The plaintiffs were grain merchants at Calgary, Alberta, and the defendant company was doing business at Truro, Nova Scotia. The action is brought to recover \$4,400 damages. The plaintiffs alleged that the defendant company by telegrams and letters agreed to buy, and plaintiffs agreed to sell, a quantity of oats, approximately 10,000 bushels, at \$1.15 per bushel; that defendant company wrongfully repudiated the contract and refused to accept the oats; and that the plaintiffs were obliged to sell and did sell them at 47 cents per bushel. The defendant company alleged that if there was a contract it was terminated by the wrongful refusal of the plaintiffs to ship the oats and to deliver them at Truro as required by the contract, except upon condition that payment was guaranteed by the bank of the defendant company. On the trial a further ground was raised and discussed as to the plaintiffs' refusal to ship the goods with permission to defendant company to inspect them before payment. Held, reversing the judgment of the Supreme Court of Nova Scotia en banc (59 N.S.R. 339), that the right of the purchaser to inspection, in the absence of a term in the contract inconsistent therewith, is determined by section 35 (2) of The Sale of Goods Act and that nothing in the terms of the contract in this case was so inconsistent as to preclude the appellant company from inspecting the oats before payment. Held, also, that the provision for payment to the Bank of Nova Scotia at Truro by the appellant company on arrival of the car at Truro does not preclude the right of inspection by the purchaser before such payment is made. Held, further, that, in view of the insistence by the respondents in their letter of the 26th of February, 1925, upon the appellants' obtaining a bank guarantee of the payments of their drafts, not withdrawn so far as the

correspondence shews, it cannot be said that they were always ready and willing to make delivery according to the terms of their contract, which is essential to their right to recover upon an anticipatory breach by the appellant company. APPEAL from the decision of the Supreme Court of Nova Scotia en banc (1), reversing the judgment of Harris C.J.[1] and maintaining the respondents' action. In addition to the statement of facts contained in the above head-note, the letters and telegrams exchanged between the parties and forming the contract are as follows: Truro, N.S., Jan. 14, 1925. Strong & Dowler, Calgary, Alta. Would book six cars each five hundred and sixty sacks number one government inspected banner seed oats at one dollar twenty-five cents bushel delivered Truro, March shipment sight draft payable on arrival car to Nova Scotia Truro wire reply. Scotia Flour & Feed Co., Ltd. The reply to this was as follows: Scotia Flour & Feed Co., Ltd., Truro, N.S. Have booked six cars five hundred sixty sacks each number one government inspected banner seed oats at one dollar twenty-five cents bushel delivered Truro March shipment. Strong & Dowler. In a letter dated January 17, 1925, from the appellant company to the respondents they, after referring to these telegrams, said: "Kindly have all drafts for seed oats made through Bank of Nova Scotia, Truro." On February 11, 1925, the appellant company sent a telegram to the respondents asking if they could re-sell the oats ordered at one cent profit, or if not whether they would exchange or substitute six cars of double recleaned two Canadian Western oats and what the difference in price would be. To this the respondents replied as follows: February 12, 1925. Scotia Flour & Feed Co., Ltd., Truro, N.S. Cannot resell, but will exchange for six cars double re-cleaned two Canadian Western new sacks at discount of ten cents per bushel. Strong & Dowler. And the appellant company accepted this by the following telegram: Truro, N.S., Feb. 13/25. Strong & Dowler, Calgary, Alta. We accept your exchange to two Canadian Western double recleaned new sacks ten cents bushel discount. Scotia Flour & Feed Co., Ltd. On the 14th February the respondents wired the appellant company about further business and asked apparently with reference to the contract already made: "Can you arrange bank guarantees of our drafts." The following communications then passed between the parties: Scotia Flour & Feed Co., Ltd. Truro, N.S., Feb. 20, 1925. Messrs. Strong & Dowler, Calgary, Alta. Dear sirs, In reference to oats on order, we must ask that you put on bills of lading for all cars to "Allow inspection" before paying draft; otherwise we cannot pay drafts. We are in receipt of your wire quoting us on 1 feed and 3 C. W. oats.. You quoted us 90 cents per bushel for 1 feeds when other firms were quoting these at 82½ cents delivered Truro. Kindly wire us on receipt of this letter stating that you will allow inspection and advising if you can supply 1 feeds sacked at 82½ cents delivered Truro, in new sacks. Yours very truly, Scotia Flour & Feed Co., Ltd., Per E. F. Smith. The reply was: February 26, 1925. Scotia Flour & Feed Co., Ltd., Truro, N.S. Regarding oats on order. We cannot ship oats three thousand miles and allow inspection. Must have payment drafts guaranteed against documents. We will attach to each draft 2 CW government grade certificate and declaration signed by supt. government elevator that he has double cleaned the oats in each car. If this is not satisfactory then we must fill contract as originally ordered. Sorry we cannot meet your price on one feed. Selling here higher than your offer. Eighty-seven Truro new sacks lowest we can quote to-day. Strong &

Dowler. And the appellant company wired: Halifax, N.S., Feb. 27. Strong & Dowler, Calgary, Alta. Wire received we will not have bank guarantee drafts nor will we lift drafts until each car is inspected on arrival it matters not whether they are true named or double recleaned have been patiently waiting for large sample of double recleaned but as yet have not received any. Scotia Flour & Feed Co., Ltd. In a letter dated March 2, 1925, the respondents say: Scotia Flour & Feed Co., Ltd., Truro, N.S. Gentlemen,— We have received your wire under date February 27th and have carefully noted contents. We of course were very much surprised at your statement that you expected oats to be shipped to Truro, N.S., for inspection before guaranteeing payment. This is the first time that we have ever been asked for anything of the kind during our experience in the grain business. Grain is always delivered on basis of government documents and it was on basis of government documents that we made the original sale to you. In changing from the original sale to double re-cleaned no. 2 C W oats we expected you of course to demand proof that the oats had been double re-cleaned and this we expected to furnish by affidavit from the manager of the government elevator at Calgary. If this affidavit is not satisfactory we suggest that you have some disinterested person here in Calgary examine the oats at time of making shipment. It is our desire to give you best class double re-cleaned no. 2 C W oats, but we cannot ship these oats 3,000 miles away to be accepted or declined by a purchaser who may be influenced by the rise or fall of the market. We are very sure that you would not do anything of the kind if conditions were reversed. We are sending you to-day under separate cover samples of the oats that we are shipping to you. These samples have been delayed until we could get the oats double re-cleaned. If these oats are not satisfactory when accompanied with government no. 2 C W grade certificate and affidavit from manager of the government elevator that they have been double re-cleaned then we must insist upon filling the original contract which is based strictly on payment against documents. We wish to be absolutely fair in every particular and wish to have you protected in every way possible and intend to give you just what you have purchased and hope it will be even better than you expected, but you can well understand that we cannot leave the acceptance to you without any protection for ourselves. We are very sure that you wish also to be fair in the matter and that you will provide some one here to examine the oats for you at time of making shipment. Very truly yours, Strong & Dowler. The appellant company wired in reply: Halifax, N.S., March 11. Strong & Dowler, Calgary, Alta. Letter received as you refuse allow inspection please cancel cannot handle now under any conditions. Scotia Flour & Feed Co., Ltd. Truro, N.S. And the respondents' answer to this was a telegram reading: March 11, 1925. Scotia Flour & Feed Co., Ltd., Truro, N.S. Holding oats ready to fill order in accordance with terms of sale. Unless we receive shipping instructions promptly will sell for your account and charge you with loss. Strong & Dowler. L. A. Forsyth for the appellant. T. R. Robertson K.C. for the respondents. At the conclusion of the argument by counsel for the appellant and for the respondents, the judgment of the court was orally delivered by the Chief Justice. Anglin C.J.C.—We have had an opportunity, during the argument of this appeal, of fully considering this case and we are convinced that the construction placed by the learned Chief Justice who tried the action upon the

terms of the contract between the parties was correct. The right of the purchaser to inspection, in the absence of a term in the contract inconsistent therewith, is determined by sec. 35 (2) The Sale of Goods Act. The learned Chief Justice was of the opinion that nothing in the terms of the contract was so inconsistent. The court en banc was of the contrary view. We are satisfied that the provision for payment to the Bank of Nova Scotia at Truro by the defendant on arrival of the car at Truro, relied on by the respondent, does not preclude the right of inspection by the purchaser before such payment is made. Moreover, we incline to think that the insistence by the respondents in their letter of the 26th of February, 1925, upon the appellants' obtaining a bank guarantee of the payment of their drafts, not withdrawn so far as the correspondence shews, precludes a holding that they were always ready and willing to make delivery according to the terms of their contract, which is essential to their right to recover upon an anticipatory breach by the defendants. The contract certainly contained nothing warranting their insistence on such a guarantee. We are for these reasons of opinion that the appeal must be allowed with costs here and in the court en banc and that the judgment of the trial judge should be restored. Appeal allowed with costs. Solicitor for the appellant: J. M. Davidson. Solicitor for the respondents: H. O. MacLatchy.

[1] (1927) 59 N.S. Rep. 539

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