

Present : De Sampayo J.

1917.

WALAKDAS *et al.* v. SUPPRAMANIAM CHETTY.

92—C. R. Colombo, 54,825.

Sale of goods—Acceptance of part of the goods—No writing—Action by buyer for damages against seller for non-delivery of the balance.

The contract of sale which is rendered binding by the acceptance of part of the goods by the buyer is the whole contract, and not the contract as against the buyer only; and, therefore, even in the absence of a writing embodying the terms of the contract, a buyer who has accepted part of the goods may maintain an action for damages against the seller for non-delivery of the balance.

THE facts are set out in the judgment.

Balasingham, for defendant, appellant.—The acceptance of a portion of the goods constitutes an enforceable contract of sale. It has the same force as payment of the price or a memorandum. It binds both parties to the contract. The defendant, therefore, is entitled to enforce the contract of sale as against the plaintiff for not having delivered 80 bags according to the contract. Counsel cited *Halsbury*, vol. 25, p. 129 *et seq.*; *Benjamin on Sales* 151.

Arulanandan, for plaintiffs, respondents.—The acceptance of the goods cannot bind the seller. Even in the case of a memorandum, it should be signed by the party to be charged.

Cur. adv. vult.

April 20, 1917. DE SAMPAYO J.—

The plaintiffs sued the defendant for the value of 20 bags of poonac sold and delivered by them to the defendant. The defendant admitted that the amount claimed was due to the plaintiffs, but pleaded that the plaintiffs had contracted to sell 100 bags of poonac, of which the plaintiffs delivered to him only the said 20 bags, and he made a claim in reconvention for damages for breach of contract in respect of the remaining 80 bags. The Commissioner disallowed the defendant's claim in reconvention, on the ground that as admittedly the contract was not in writing the defendant could not in law seek to enforce it. I think this view of the law is erroneous.

Section 4 (1) of the Ordinance No. 11 of 1896, which governs this matter, is as follows: "A contract for the sale of any goods shall not be enforceable by action unless the buyer shall accept part of

1917.

DE SAMPAYO

J. J.

Walakdas v.
Supp-
maniam
Chetty

the goods so sold and actually receive the same, or pay the price or a part thereof, or unless some note or memorandum of the contract be made and signed by the party to be charged or his agent in that behalf. ”

At first sight there is something in the suggestion on behalf of the plaintiffs that the contract formed by means of acceptance of part of the goods has regard only to a case where the buyer is sued, and not where the buyer sues on the contract. But I think that the section intends that such acceptance shall bind both the parties with regard to the whole contract. Delivery and acceptance are reciprocal acts, and there is no reason why the contract thereby induced should not bind both parties. Acceptance of part of the goods is put on the same effective footing as payment of part of the price, and in the latter case there will be no question that the buyer can enforce the contract by action. Section 4 (1) of the Ordinance is taken from section 4 (1) of the English Sale of Goods Act, which itself is based on section 17 of the Statute of Frauds. The English section, however, contains words which appear to me to throw additional light on the meaning of the provision. For under it the contract is enforceable, if the buyer “ give something in earnest to bind the contract, ” or, as the Statute of Frauds has it, “ to bind the bargain. ” Similarly, the performance of any of the other acts mentioned in the first part of the section binds the contract in the same way. The effect of acceptance of part of the goods, as also of payment of the price or part thereof, is to establish the existence of an enforceable contract of sale between the parties (*Tomkinson v. Staight*¹), and, as was said by Cotton L.J. in *Kibble v. Gough*,² “ the object of the statute is that, where there was no contract in writing, there must be some overt act to render the bargain binding. ” The bargain or contract which is thus rendered binding is the whole contract, and not the buyer’s part only.

The judgment is set aside, and the case remitted to the Court of Requests for further proceedings. The defendant will have the costs of appeal.

Set aside.

¹ (1856) 17 C. B. 697.

² (1878) 88 L. J., at page 206.