[FULL BENCH.] 1915.

Present: Ennis, Shaw, and De Sampayo JJ.

THE ATTORNEY-GENERAL *v.* ABRAM SAIBO & CO.

369—D. C. Colombo, 35,575.

Contract for the sale of goods—Consideration—English law—Roman-Dutch law—Implied covenant—Penalty.

It was agreed, *inter alia*, between the General Manager of the Ceylon Government Railway and the defendant that defendant should supply rice for one year at a specified price "in such quantities as may from time to time be required for the general service of the railway"; that the deliveries should be made upon orders signed by the Railway Storekeeper; that the General Manager should pay for the rice supplied on the 15th day of the month following the delivery; that should the defendant fail to supply the rice ordered the General Manager should be at liberty to purchase elsewhere, and the defendant should pay a certain penalty for such default, and also pay as damages the difference between the agreed price and the price at which the General Manager bought the rice elsewhere. The defendant supplied rice for a few months and then made default. The Attorney-General sued defendant for damages for breach of contract and for forfeiture of the deposit of Rs. 350. The District Judge held that, in the absence of any undertaking by the General Manager to give any orders, there was a failure of consideration for the respondent's promise to supply during the fixed period, and that the agreement was nothing more than a continuing offer, which would become a contract when each separate order was issued.

Held, in appeal (*per* SHAW J. and DE SAMPAYO J.), that the question whether there was consideration to support the contract for the sale of goods was governed by the English law.

Per SHAW J. and DE SAMPAYO J.—That the terms of the tender and acceptance were such as to impose upon the General Manager an obligation to order all the rice required for the railway during the year, and that there was, therefore, consideration for the contract.

Per curia.—That even if the document amounted to offer only, it must, nevertheless, be considered as having been accepted in its entirety by the General Manager as soon as the first order was given by him, and that the contract became thus complete.

THE facts are set out in the judgment of Ennis J. The contract between the General Manager of the Ceylon Government Railway and the defendant was as follows:—

Contract for the supply of Rice to the Ceylon Government Railway.

This Indenture, made this 11th day of October, 1911, between K. Abram Saibo, of Colombo (on behalf of himself, his heirs, &c.), hereinafter designated "the contractor," of the one part, and Geoffrey Philip Greene (General Manager, Ceylon Government Railway, on

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behalf of himself his successors in office for the time being, and on behalf of His Majesty the King), hereinafter designated "the General Manager," of the other part, which cannot be assigned or sub-let without the authority of the Government :

Witnesseth, that in consideration of the covenants and agreements hereinafter contained on the part of the General Manager, the contractor does hereby, for himself, his heirs, &c., covenant and agree with the General Manager, and his successors in office as General Manager for the time being, in manner following, that is to say:—

That the contractor shall supply the rice mentioned in the annexed schedule, in such quantities as may from time to time be required for the general service of the Ceylon Government Railway, from the 1st day of November, 1911, to the 31st October, 1912, of the quality described in the schedule, and in all respects equal to the sample deposited and accepted by the General Manager.

2. The deliveries shall be made by the said contractor from one to three days after each and every order shall have been delivered to him according to the time more fully specified in the schedule, and at the places and at the price specified in the said schedule, upon orders signed by the Railway Storekeeper.

3. And the General Manager agrees with the aforesaid contractor that payment shall be made to the contractor for the rice supplied under this contract by means of crossed cheques, at the general offices of the railway, on the 15th day of the month following that in which the rice has been supplied, upon his producing receipts duly signed by the Railway Storekeeper or his representative, and on production of claim vouchers properly prepared in accordance with forms to be supplied on application at the office of the Railway Storekeeper, and duly certified by the said Railway Storekeeper. And it is further agreed that no claim shall be entertained unless preferred in proper time and on or before the 15th day of November, 1912.

4. It is hereby agreed that should the rice, or any portion thereof, offered by the contractor be objected to by the General Manager or his Assistant, or by the Railway Storekeeper, as not equal to the quality contracted for, or being of an inferior quality to the sample deposited with the aforesaid Railway Storekeeper, the contractor shall forthwith remove at his own expense the rejected rice and replace the same with a like quantity of unexceptional quality within a period of two days. The decision of the General Manager as to the quality in all cases to be final and conclusive, and shall be binding on the Ceylon Government and the contractor.

5. Should the aforesaid contractor fail to supply the rice demanded of him within the period specified in clauses 2 and 4 of these articles of agreement, or on the order for delivery, or should he fail to replace any rejected article with a like quantity of approved quality within the period allowed in clause 4 of this contract, the General Manager shall be at liberty to purchase elsewhere, or procure at whatever price he may deem fit, such quality of rice as the contractor may have failed to supply or replace, and the contractor shall be liable to a penalty of Rs. 10 per day until the order is completed, or for every such case of default or delay, in addition to any additional payment for which he may be held by the General Manager liable or required to make good under clauses 4 and 6 of this contract.

6. Should the articles so purchased by the General Manager to replace any quantity which the contractor may have failed to deliver or replace cost more than the price agreed upon under this contract, the said contractor hereby agrees to pay to the General Manager, on behalf of His Majesty the King, the full amount of such excess of cost, together with all expenses attending the purchase and procuring of the same, in addition to the penalty stated in clause 5.

7. It is hereby stipulated that the payments to which the contractor has made himself liable under clauses 5 and 6 of these articles of agreement shall be deducted by the General Manager from any moneys due, or which may hereafter become due, to the aforesaid contractor under this or any other contract he may hold with the Ceylon Government, or that such sum may be recovered by such means or manner as may seem fit to the said General Manager.

8. In case the contractor shall fail to supply on two or more occasions the rice demanded of him, or shall repeatedly offer an article of inferior quality, or fail to replace the same when rejected, he shall be held to have failed in the due performance of this contract, and be bound to pay or forfeit to the General Manager, on behalf of His Majesty the King, the sum of Rs. 350 which he has deposited as security for the due performance of this contract as penalty for such total failure of this agreement.

In witness whereof, &c.

Signed and witnessed.

Garvin, S.-G. (with him *Fernando, C.C.*), for the appellant.—The District Judge is wrong in holding that there is no mutuality and consideration for the agreement. The law applicable to the question of the validity of the agreement is the Roman-Dutch law, and not the English law. Under the Roman-Dutch law consideration within the meaning of the English law is not necessary to support the agreement. *Justa causa* is enough. *Lipton v. Buchanan.*[1]

There must first be a contract for the sale of goods before the English law can be applied to it, in terms of section 58 of the Sale of Goods Ordinance of 1896. To decide the question whether there is a valid contract or not, we must turn to the common law, viz., the Roman-Dutch law.

The section (58) does not say that the rules of the English law shall apply to the subject of the sale of goods; the words of the section are: "The rules of the English law shall apply ..... to contracts for the sale of goods," that is to say, English law regulates the results arising from a completed contract for the sale of goods.

Counsel referred to *National Bank of India v. Stevenson.*[2] The absence of consideration is not "an invalidating cause" within the meaning of that expression in section 58.

Even if this case is governed by the English law, there is consideration for the agreement to supply the rice, because there is an implied covenant on the part of the General Manager of the Railway

[1] *(1904) 8 N. L. R. 49.*

[2] *(1913) 16 N. L. R. 496.*

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to order all the rice required for the purposes of the Railway from the defendant, and pay at fixed price for the rice delivered in terms of the agreement. See *The Moorcock*,[1] *Hamlyn v. Wood*,[2] *Ford v. Newth*.[3]

This is in effect a contract to deliver by instalments.

The case relied on by the respondents at the first argument (*Queen v. Demers* [4]) is not a binding authority for the proposition that the General Manager was not bound to buy rice from the defendant. The exact terms of the contract which was construed in that case are not set out in the report; and the case turned merely on the construction of the document.

The case relied on by the District Judge—*Great Northern Railway Company v. Witham* [5]—is no authority for holding that there is no mutuality and consideration for the contract. The consideration need not appear on the face of the document. Even if the document amounted merely to an offer on the part of the defendant, it must be considered as having been accepted by the General Manager in its entirety, and for the whole period, as soon as the General Manager gave the first order for rice in terms of the contract. After one order was given it was not possible for the defendant to withdraw his offer.

Counsel referred to *Benjamin on Sales 69*, *Moon v. Cumberwell Vestry*.[6]

Samarawickrama (with him *Keuneman*), for the defendant, respondent.—Section 58 of the Sale of Goods Ordinance makes it clear that the question whether there is consideration for the contract is governed by the English law. Want of consideration is "an invalidating cause."

Counsel cited *Latchimie v. Jamison*,[7] *National Bank of India v. Stevenson*.[8]

There is no mutuality to support the contract, as the General Manager is not bound to give any order for rice to the defendant.

The case of *The Queen v. Demers* [9] is indistinguishable from the present case.

The obligation to deliver rice arises with each order. Till the order is given there is no contract; it is only an offer on the part of the defendant which he can withdraw before it is accepted.

Counsel cited *Leake on Contracts*, *p. 6 (6th ed.)*; *Halsbury*, *vol. XXI.*, *pp. 6 and 7*.

Garvin, *S.-G.*, in reply.

Cur. adv. vult.

[1] *14 Probate Div. 64.*
[2] *(1891) 2 Q. B. 488.*
[3] *(1901) 1 K. B. 683.*
[4] *(1900) A. C. 103.*
[5] *L. R. 9 C. P. 16.*
[6] *89 L. T. 595.*
[7] *(1913) 16 N. L. R. 286.*
[8] *(1913) 16 N. L. R. 496.*
[9] *(1900) A. C. 103.*

November 30, 1915. ENNIS J.—

The Attorney-General, the appellant, sued the respondents for Rs. 2,544.47 and interest, being damages for breach of contract for the supply of rice to the Ceylon Government Railway.

On October 11, 1911, the General Manager of the Ceylon Government Railway entered into a contract with the respondents, by which the respondents agreed, *inter alia*, to supply rice " in such quantities as may be required for the general service of the Ceylon Government Railway from November 1, 1911, to October 31, 1912, " and the General Manager agreed to pay for the rice at the agreed price. It was also agreed that deliveries were to be made upon orders signed by the Government Railway Storekeeper, and should the respondents fail to deliver within a specified time, the General Manager should be " at liberty to purchase elsewhere, " in which contingency the respondents undertook to pay the General Manager the amount of the excess.

A number of orders were given in pursuance of the agreement, until on June 13 the respondents wrote cancelling the contract as from May 2, 1912, and failed to fill any of the orders given after May 2.

The learned District Judge held that, in the absence of any undertaking by the General Manager to give any orders, there was a failure of consideration for the respondent's promise to supply during the fixed period, and that the agreement was nothing more than a continuing offer, which would become a contract when each separate order was issued. He decreed accordingly in favour of the plaintiff in respect of one order given prior to the respondents' letter of June 13. From this decree the plaintiff appeals.

Three points only were urged for the appellant on the appeal. First, that in any event the agreement sued upon was a good and valid contract by Roman-Dutch law, and that Roman-Dutch law would govern the case; secondly, if English law applied, there was in the agreement an implied covenant by the General Manager to order from the respondents all the rice required for the service of the Railway during the term; and thirdly, if not, there was a good consideration for the whole contract when the first order was given.

The first point turns on the construction of section 58 of the Sale of Goods Ordinance, No. 11 of 1896. This section is taken, with slight variation, from the English Common law, and makes it still apply to contracts for the sale of goods in all matters upon which the Act was silent. The Ceylon section runs : " The rules of English law ..... shall apply to contracts for the sale of goods. " It was argued that there must first be a contract before English law could apply under this, and that to ascertain whether there was a contract one must turn to the law of the country, *i.e.*, the Roman-Dutch law. " A contract of sale of goods " is defined by section 1 of the Ordinance to be a contract whereby the seller transfers, or

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agrees to transfer, the property in goods to the buyer for a price. As "contract" has been defined (*Pollock on Contracts*) to be an agreement which produces an obligation. An agreement is voidable" when it is enforceable by law at the option of one of the parties but not of the other; it is said to be void when it is not enforceable by law. A voidable agreement is valid so long as it is not cancelled by the party who can avoid it, but a void agreement has no legal existence. Section 58 of the Ordinance No. 11 of 1896 expressly says, with regard to the application of English law, that "in particular the rules relating to ..... the effect of fraud, ... duress, ... mistake, or other invalidating cause shall apply." Invalidating causes can have no reference to void agreements, for nothing could validate a void agreement.

It cannot be contended that the agreement in the present case is void *ab initio*. There is nothing illegal in it, it is clearly an agreement entered into with the free consent of the parties, and is enforceable, it is conceded, when an order is given. The point has been obscured by the use of the term "mutuality." As my brother De Sampayo *pointed out*, want of mutual consent would constitute a failure to make any agreement at all, but the want of reciprocal obligations would at the most be but a ground for making the agreement voidable. The term "want of mutuality" is used to express both of these positions, but, strictly speaking, it can apply to the first only. If, then, there is an agreement (which is not void), no question of Roman-Dutch law can arise.

On the second point argued for the appellant, that a covenant by the General Manager of the Railway must be implied from the terms of the contract itself, several cases were cited (*The Moorcock*,[1] *Hamlyn v. Wood*,[2] *Ford v. Newth*[3]) to support the proposition that where it is reasonable and necessary to give efficacy to the contract a covenant will be implied. The general rule is found in the case of *The Moorcock*.[1] "The law raises an implication from the presumed intention of both the parties, with the object of giving to the transaction such efficacy as they both must have intended that at all events it should have." Whether or not a covenant will be implied will turn on the circumstances of each case. If the agreement be a formal written one, as in the present case, the terms of the document only can be looked into. This considerably narrows the field for implication. On this point the respondents rely mainly on the case of *The Queen v. Demers*.[4] In that case Demers sued upon an agreement made with the Government of Quebec for damages for breach of contract. In the contract Demers covenanted to print and bind certain specified public documents for a term of years. He executed the work, and was paid for it, up to a certain time, but thereafter the Government cancelled the contract and did not give

[1] *14 Probate Div. 64.*
[2] *(1891) 2 Q. B. 488.*
[3] *(1901) 1 K. B. 683.*
[4] *(1900) A. C. 103.*

him any more orders. He claimed damages for the failure of the Government to give him the work. It was found, as a fact, that the contract did "not purport to contain any covenant or obligation of any sort on the part of the Crown." The document upon which the finding is based is not, however, set out in the report, and the *ratio decidendi* in the case was: "Assuming the contract to be a good and valid contract, the respondent has not shown that there was any breach on the part of the Government." The case, then, is no authority for the proposition that no covenant can be implied from the terms of the contract in this case, because we do not know the exact terms of the contract in *Demers'* case, and the question is one of construction. *Demers'* case is the converse of the present case, and it seems to me undesirable to decide the point here, and unnecessary because, in my opinion, the contract shows a sufficient consideration for the respondent's promise without implying any covenant, which is the appellant's final contention. The contract recites the following consideration:—"In consideration of the covenants and agreements hereinafter contained on the part of the General Manager." One of the covenants, contingent upon an order being given, was to pay a certain fixed price for the rice when delivered. That price must have been arrived at on a contemplation that the agreement should be in force for the full term, namely, one year; and although the respondents might have withdrawn from the contract before it was accepted by an order being given, the consideration for the contract as a whole was perfected, and the respondents could not then put an end to the contract. This position finds some support in certain observations in the case of the *Great Northern Railway Company v. Witham*,[1] and seems to be the view taken by Mr. Benjamin.[2] A contract of the formal nature of the document A must, it seems to me, be regarded as a whole, and should not be spilt up and considered as a series of contracts severally perfected each time an order is given.

I would accordingly allow the appeal.

SHAW J.—

The following points were taken on behalf of the appellant:—

First.—That the question whether or not a binding contract has been entered into must be determined by Roman-Dutch law and not by English law, and that by Roman-Dutch law consideration within the meaning of the English law is unnecessary, *justa causa* being all that is required.

Second.—That even supposing that English law applies, and that consideration is necessary for the contract, there was, in fact, consideration for the agreement to supply the rice during the whole period, because the contract must be construed as containing a

[1] *L. R. 9 C. P. 16.*

[2] *Benjamin on Sales, 5th ed., p. 69.*

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promise on the part of the General Manager of the Railway to order and pay for all the rice required for the purposes of the Railway during the period mentioned.

Third.—That even if there was no complete contract in the document itself, and if that document merely amounted to an offer, it must, nevertheless, be considered as having been accepted by the General Manager in its entirety, and for the whole period mentioned in it, as soon as any orders were given pursuant to it.

With regard to the first point, I am clearly of opinion that the question must be determined by English and not by Roman-Dutch law. Section 58 (2) of the Sale of Goods Ordinance, 1896, provides that "the rules of the English law, including the Law Merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress, coercion, mistake, or other invalidating cause, shall apply to contracts for the sale of goods."

The object of this Odinance, taken as a whole, seems clearly to be that, apart from any express provisions to the contrary, the English law relating to the sale of goods, both as to the inception of the contract and as to its effect and performance, shall apply in this Island. Moreover, want of consideration, which is an invalidating cause under English law, appears to be one of the particular matters referred to in the section I have quoted.

With regard to the second point, absence of consideration amounts to a want of mutuality, which is essential to a binding contract under English law. *Cook v. Oxley*,[1] *Adams v. Lindsell*,[2] and the cases of *Great Northern Railway Company v. Witham*,[3] *Burton v. Great Northern Railway Company*,[4] and *Moon v. Camberwell Vestry*,[5] show that when a tender is made for the supply of such goods as the intending purchaser may subsequently order, the mere acceptance of the tender does not amount to a binding contract, because the intending purchaser has not bound himself to order all, or indeed any, of the goods. Notwithstanding this, the terms of the tender and acceptance may be such as to impose upon the acceptor an obligation to order all the goods required for the particular business or purpose during the period specified. *Ford v. Newth*,[6] *Islington Vestry v. Brentnall and Cleland*.[7]

In the present case the tender and acceptance have been incorporated into a formal document signed by both parties. By it the respondents undertake to supply rice at the price mentioned, "in such quantities as may from time to time be required for the general service of the Ceylon Government Railway" during the period

[1] *3 T. R. 653.*
[2] *1 B. & Ald. 681.*
[3] *L. R. 9 C. P. 16.*
[4] *9 Ex. 507.*
[5] *89 L. T. 595.*
[6] *(1901) 1 K. B. 683.*
[7] *71 J. P. 407.*

specified, but the General Manager does not, in so many words, agree to order or pay for the rice. On behalf of the appellant it is contended that such an agreement, which is necessary to give effect to the clear intention of the contract, must be taken to be implied and must be read into it, and the case of *The Moorcock* [1] was cited as authority for the proposition. I think the contention is sound. The contract is for the supply of all the rice that may be required for the service of the railway during the specified period, and not for the supply of such as may be ordered, as in the cases of *Great Northern Railway Company v. Witham* [2] and *Burton v. Great Northern Railway Company*.[3] The intention of the parties seems to be clear that one party should supply and the other buy the whole of the rice stipulated for, and this seems especially demonstrated by the clause which empowers the General Manager to buy elsewhere in the event of failure to supply by the respondents. It seems to me to be immaterial whether the contract is in the form of a formal contract or not, if the term must necessarily be implied to give effect to it.

The view I have come to on the second point renders the decision of the third unnecessary, but I think that, even supposing that there was no consideration for the respondents' original agreement to supply rice during the entire period, and the document was therefore only a continuing offer so long as it remained unrevoked, so soon as the first order was given it was thereby accepted by the General Manager of the railway in its entirety. The price was fixed and the offer made on the assumption that the supply was to be all the rice required by the railway during the whole of a fixed period, and I do not think it could have been accepted in part by the General Manager, and his order for the first instalment, therefore, must be taken as an acceptance of the offer as a whole. See *Ford v. Newth*.[4]

I have felt some difficulty with regard to both the second and third points, in consequence of the decision of the Privy Council in *Queen v. Demers*.[5] In that case, under facts which apparently were very similar to those of the present case, it was held that the Crown, who had accepted a tender for certain work, was not bound because it had not specifically contracted to order the work. If this were so in the present case there would be a want of mutuality, and the respondents would not be bound, and would be at liberty to withdraw their offer at any time.

Queen v. Demers is not a very satisfactory case, and the facts are not very fully reported. It appears that the point on which the case was decided was never referred to in the argument, which was directed to quite another matter, but was taken by their Lordships in their judgment for the first time, and none of the authorities

[1] *L. R. 14 P. D. 64.*
[2] *L. R. 9 C. P. 16.*
[3] *9 Ex. 607.*
[4] *(1901) 1 K. B. 683.*
[5] *(1900) A. C. 103.*

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bearing on the point were cited to them. Nevertheless, if it were directly in point in the present case it would be binding upon us, and would have to be followed. The actual terms of the contract, however, in that case are not set out in the report, and every case must be determined on the wording and intent of the particular contract under consideration; and it may well be that if we had the exact wording of the contract in that case it might show a very different intention to that in the present.

I would allow the appeal with costs and set aside the judgment of the District Judge, and enter judgment for the plaintiff for the sum of Rs. 2,194.47, with costs as prayed for in the plaint.

DE SAMPAYO J.—

In 1911 the General Manager of the Ceyon Government Railway called for tenders for the supply of rice for the use of the railway for one year. In answer to the advertisement the defendant made a tender, which was accepted, and a formal contract dated October 11, 1911, was entered into between the General Manager and the defendant, whereby it was, *inter alia*, agreed that the defendant should supply the rice, the quality and price of which were specified in the schedule, "in such quantities as may from time to time be required for the general service of the Ceylon Government Railway," the deliveries to be made upon orders signed by the Railway Storekeeper; that the General Manager should pay for the rice supplied on the 15th day of the month following the delivery, upon the production of receipts signed by the Railway Storekeeper; that should the defendant fail to supply the rice ordered, or to replace any rice rejected as being inferior in quality, the General Manager should be at liberty to purchase elsewhere, and the defendant should pay a certain penalty for such default, and also pay as damages the difference between the agreed price and the price at which the General Manager might purchase or procure elsewhere; and that should the defendant fail to supply on two or more occasions the rice demanded, he should be held to have failed in the performance of the contract, and be bound to pay or forfeit to the General Manager on behalf of the Crown the sum of Rs. 350 which he had deposited as security.

Under the agreement the defendant duly supplied rice as ordered from November, 1911, to May, 1912, but on June 13, 1912, he wrote to the General Manager stating that owing to the abnormal rise in the price of rice had suffered loss in executing the orders, and requesting that the contract be considered as cancelled as from the end of May, 1912. The proposal to cancel the contract was not accepted, and the defendant having made default in executing five orders issued to him between May 31 and September 19, 1912, the Attorney-General, on behalf of the Crown, brought this action for

dam es for breach of contract and for forfeiture of the deposit of R. 350. The defendant, *inter alia*, pleaded that the agreement was v id for absence of mutuality and want of consideration, as the Gener. Manager l l not on his part agreed to purchase any rice from the defendan The District Judge upheld this contention, and consid red that the agreement amounted only to an offer, which might be withdrawn before a particular order was given, and accordingly he gave judgment for plaintiff for damages only in respect of the order of May 31, 1912, and dismissed the claim in respect of the orders since the defendant's letter of June 18, 1912, cancelling the contract, and he also gave judgment in reconvention for the defendant for the sum of Rs. 350 deposited as security. The Attorney-General has appealed.

The Solicitor-General, who appeared for the appellant, in the first place contended that the law applicable to the question of the validity of the agreement was the Roman-Dutch law, which did not require the existence of a consideration to support a contract in the same sense as the English law, and that the defendant was, therefore, bound to supply rice under the agreement, even though the General Manager might not be bound to purchase from him. I do not think this argument is sustainable. The law now governing the sale of goods is the Ordinance No. 11 of 1896, which is wholly taken from the English Sale of Goods Act, and the effect of the Ordinance is to introduce the English law on the subject into Ceylon, except in certain particulars, which are specially provided for in the Ordinance, and which do not affect the present question. The Ordinance, after generally adopting the various clauses of the English Act, provides by section 58 (2) as follows: "The rules of the English law, including the Law Merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, and in particular the rules relating to the law of principal and agent and the effect of fraud, misrepresentation, duress, or coercion, mistake, or other invalidating cause, shall apply to contracts for the sale of goods." I should say that the whole spirit of the legislation was to abolish the Roman-Dutch law on the subject of contracts for the sale of goods; but it appears to me that the sub-section I have quoted puts the matter beyond doubt. It is, however, contended that when the above sub-section enacts that the rules of English law shall apply to "contracts for the sale of goods," it means to refer to completed contracts and to the results arising therefrom, and that for the requisites for the formation of valid contracts we must still look to the Roman-Dutch law. In my opinion there is no good ground for this contention, and I think that the word "contract" is used in the largest sense, and that the effect of the provision is to make English law applicable to all matters relating to or in respect of contracts for the sale of goods. There must, therefore, be consideration to support such contracts, even with us.

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There is more substance in the next contention on behalf of the appellant, namely, that on a true construction of the agreement the General Manager must be taken to have bound himself to order of the defendant all the rice required during the period in question. In this connection the defendant gives a narrow meaning to the expression " in such quantities as may from time to time be required," and argues that only such rice as might be requisitioned was to be supplied. But such a restriction is not possible. The full expression is, " required for the general service of the railway." I think the contract provided for all the requirements of the railway for twelve months. It will be noticed, on the other hand, that in certain circumstances the General Manager was given liberty to purchase elsewhere, and this provision, together with the general character of the written agreement, appears to me to lead to the inference that it was intended by both parties that the General Manager should purchase from the defendant all the rice required. If this is right, then there was mutuality in the sense contended for. However that may be, I am content in this part of the case to refer to the fact that the instrument itself expressly states a sufficient consideration for the defendant's part of the agreement, for it witnesses that the defendant bound himself to supply the rice " in consideration of the covenants and agreements herinafter contained on the part of the General Manager." The Court is not concerned with the adequacy of the consideration. It will enforce the contract if there is some consideration. There may be something in the prices agreed upon, and in the manner of payment, and in the other stipulations on the part of the General Manager, which, in the estimation of the defendant himself, was a sufficient consideration for his promise.

I find it difficult to construe the agreement as amounting to a mere offer to supply rice by the defendant. If the matter must needs be so put, then it is clear to me that there was one offer to supply all the rice required for the whole twelve months, and that this offer was accepted as a whole by the General Manager. It was acted upon without any question for the greater part of the period, and must, I think, be kept open till the end of it. *Great Northern Railway Company v. Witham* [1] decided that in such cases as this the contractor was bound to honour orders actually issued to him, but the effect of a notice before any particular order was given that he would not perform the agreement was left undecided. The later case of *Ford v. Newth* [2] shows that in the absence of any qualifying circumstance a tender and acceptance constitute a contract binding on both parties. Darling J. there said that an acceptance of a tender meant " We accept your offer to supply such articles as we intimate to you are a part of the supply wanted during the twelve months at the price you have stated," and that in such a case there

[1] *L. R. 9 C. P. 16.* [2] *70 L. J. Q. B. 459.*

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was an obligation on the part of the one to buy from the other. Channel J. observed that the matter depended on the words of the documents in a particular case, and added "Applying one's knowledge of business to what we know was the intention of the parties in such a case as this, a very little indeed in such documents would be quite sufficient to turn the transaction into a contract." It was accordingly held that there was contract binding on both parties until it was mutually cancelled. Adopting the language of Lord Bowen in *The Moorcock*,[1] I think such documents must be so read as "to give such business efficacy to the transaction as must have been intended at all events by the parties, who are business men." As indicated above, there is sufficient in the written agreement in this case to show that the intention of both parties was to bind each other mutually once for all, and in my opinion the defendant could not alone cancel the contract as he purported to do by his letter of June 13, 1912. The case of *Queen v. Demers*[2] was cited at the argument. But I do not think that that decision advances the case of the defendant. That was a case brought by the tenderer against the Crown for refusal to accept deliveries, and was, therefore, the converse of the present case. The Privy Council did not purport to decide the question whether the contract was wholly void for want of mutuality. All that it decided was that, assuming the contract to be valid, there was no obligation on the Crown to purchase, and there was, therefore, no breach of contract. Moreover, the report of the case does not set out the terms of the contract, so that I think that case is no guide for the interpretation of the present contract.

I think the judgment appealed from is erroneous. The provision for the forfeiture of the sum of Rs. 350, deposited as security, is purely in the nature of a penalty, and I do not think that the plaintiff is entitled to the declaration of forfeiture prayed for. I would vary the decree and enter judgment for the plaintiff for the amount of damages claimed, with costs in that class in both Courts.

Set aside.

[1] 63 *L. J. Prob. 73.*

[2] *(1900) A. C. 103.*