

O'Grady Vs. Herbert Winn

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Court : Allahabad

Decided On : Feb-03-1912

Reported in : 14Ind.Cas.135

Judge : Henry Richards, C.J. and ;Banerji, J.

Appellant : O'Grady

Respondent : Herbert Winn

Judgement :

1. This appeal arises out of a suit for damages for breach of warranty on the sale of a horse. The matter commenced between the parties by an answer to an advertisement in the 'Pioneer'. This was followed by considerable correspondence in the course of which the defendant made representations which the Court below held amounted to a warranty. This was also admitted on behalf of the defendant. We ourselves consider that the representations did amount to a warranty that the horse was sound. It has been found on evidence that the horse was unsound at the time of the sale. This is a finding of fact binding on this Court in second appeal. The Courts below awarded damages amounting to Rs. 200. We are bound by this finding also. Shortly before the bargain was concluded between the parties and after the defendant had made the representations, which we hold to amount to a warranty, the plaintiff telegraphed on the 29th of July 1908: 'Will take mare. Letter posted.' This telegram was followed by a letter of the same date, in which the plaintiff wrote as follows: 'I write to confirm my telegram of date and to say that I

will take the mare if you have no objection to getting a veterinary certificate. On hearing from you, I will arrange for the Railway passage.' In second appeal to this Court, it was urged on behalf of the defendant that, having regard to this letter, it must be taken that the plaintiff purchased the mare on the strength of the veterinary certificate and not on the strength of the representations or the warranty already given by the defendant. The learned Judge, before whom the appeal came, remitted certain issues and on return of the findings which were all, more or less, in favour of the plaintiff, the learned Judge of this Court set aside the decree of the lower Appellate Court and dismissed the plaintiff's suit. In our opinion, no issues ought to have been referred by the learned Judge. The findings of the Court below, so far as they were findings of fact, were binding upon him and he ought to have accepted them. The findings if accepted, disposed of the case between the parties. The only possible question which was open to the appellant was to contend that, as a matter of law, the representations did not amount to a warranty. The learned Judge seems to have been impressed with the contention that, inasmuch as the plaintiff had asked for a Veterinary Surgeon's certificate, he had 'waived the warranty given by the defendant. The learned Counsel evidently relied, as he relied in this Court, on Section 7 of the Contract Act. In that section it is provided as follows. In order to convert a proposal into a promise, the acceptance must be absolute and unqualified.' It is argued that the warranty was a proposal within the meaning of the section and that because the plaintiff asked for a Veterinary Surgeon's certificate, he did not accept absolutely and without qualification the warranty and that, therefore, the defendant was not bound by it. In our opinion, Section 7 has no application whatever to the present case. The representations were made to the plaintiff in the course of the negotiations which preceded the actual contract between the parties, and it cannot for a moment be said that the plaintiff by asking for a Veterinary Surgeon's certificate had waived the warranty and representations which had already been made to him. The proposal of the defendant was to sell a horse and the plaintiff accepted that proposal. The terms of the contract are to be gathered from the correspondence as a whole. In our opinion, the decree of the learned Judge of this Court cannot be upheld. We accordingly allow the appeal, set aside the decree of this Court and restore the decree of the lower Appellate Court with costs of both the hearings in

this Court.

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