

Filley Vs. Pope

Filley Vs. Pope

SooperKanoon Citation : sooperkanoon.com/85009

Court : US Supreme Court

Decided On : Oct-26-1885

Appeal No. : 115 U.S. 213

Appellant : Filley

Respondent : Pope

Judgement :

Filley v. Pope - 115 U.S. 213 (1885)

U.S. Supreme Court Filley v. Pope, 115 U.S. 213 (1885)

Filley v. Pope

Argued April 6-7, 1885

Decided October 26, 1885

115 U.S. 213

IN ERROR TO THE CIRCUIT COURT OF THE UNITED
STATES FOR THE EASTERN DISTRICT OF MISSOURI

SYLLABUS

In a mercantile contract, a statement descriptive of the subject matter or of some material incident, such as the time or place of shipment, is ordinarily to be regarded as a warranty, or condition precedent, upon the failure or nonperformance of which the party aggrieved may repudiate the whole contract.

Under a contract for the sale of

"500 tons No. 1 Shott's (Scotch) pig iron at \$26 per ton cash in bond at New Orleans, shipment from Glasgow as soon as possible, delivery and sale subject to ocean risks,"

shipment from Glasgow is a material part of the contract, and the buyer may refuse to accept such iron shipped as soon as possible from Leith, and arriving at New Orleans earlier than it would have arrived by the first ship that could have been obtained from Glasgow.

This action was brought by Thomas J. Pope and James E. Pope, citizens of New York and partners under the name of Thomas J. Pope & Brother, against Oliver B. Filley, a citizen of Missouri.

The petition alleged that on February 20, 1880, the defendant bargained for and bought of the plaintiffs, and they sold to him, 500 tons of No. 1 Shotts (Scotch) pig-iron at the price of \$26 per ton, to be paid in cash by the defendant upon the delivery to him of the iron in bond at New Orleans, the iron to be shipped from Glasgow, Scotland, as soon as possible, and the delivery and sale to be subject to ocean risks, and the defendant agreed to accept the iron as aforesaid, and to pay the plaintiffs therefor the sum of \$13,000, and that the particulars of the sale and agreement were set forth in a note and memorandum thereof signed by the defendant, as follows:

"St. Louis, February 20, 1880. Thomas J. Pope & Bro., New York, have sold for your account to Mr. O. B. Filley, St. Louis, 500 tons No. 1 Shotts (Scotch) pig-iron at \$26 per ton cash, in bond at New Orleans. Shipment from Glasgow as soon as possible. Delivery and sale subject to ocean risks."

"Very truly,"

"MILLARD & COMBS"

Across the face of this was written: "Accepted, O. B. Filley."

Page 115 U. S. 214

The petition further alleged that afterwards, and as soon as possible, the plaintiffs caused the iron to be shipped from Glasgow to New Orleans; that upon its arrival at New Orleans on May 26, 1880, they offered to deliver it to the defendant in bond at that port and requested him to receive and pay for it, but he refused to do so, and the plaintiffs were forced to sell it at a loss.

The defendant in his answer admitted the contract and his refusal to accept the iron; denied the other allegations of the petition, and alleged as the ground of his refusal and as a defense to the action that the plaintiffs failed to ship the iron from Glasgow as soon as possible after the date of the contract. The plaintiffs filed a replication denying all new matter in the answer.

The testimony of the witnesses called by the plaintiffs at the trial tended to prove the following facts:

Immediately after making this contract, the plaintiffs, by telegraph, bought the iron of John Anderson, of Glasgow, and requested him to ship it to New Orleans. The iron was then at the works of the Shotts Iron Company in Scotland, equidistant and equally accessible by railway from the ports of Glasgow on the west coast, and of Leith on the east coast, and such iron was sometimes shipped from Glasgow and sometimes from Leith. Anderson at once made diligent inquiry and efforts to secure transportation from Glasgow, and from Leith, and from other Scotch ports, to New Orleans, but, owing to the great scarcity of ships at that time, could only secure one vessel, the bark *Alpha*, which was then discharging her cargo at Leith. This vessel he chartered on February 23, 1880, three days after the contract in question was made at St. Louis. No vessel or transportation could be obtained from Glasgow to New Orleans then or for weeks afterwards. The iron

was sent down from the works of the Shotts Iron Company to Leith as fast as the bark could receive it. With all speed, she discharged her cargo, took in the iron, and sailed from Leith for New Orleans, where she arrived about May 26. The distance by sea was greater from Leith to New Orleans than from Glasgow to New Orleans. If the Alpha had come round to Glasgow

Page 115 U. S. 215

and shipped the iron there, it would have taken from six to twenty-six days, according to the winds, and she would have had to take in ballast at Leith and discharge it at Glasgow, involving considerable delay and expense.

The court instructed the jury that the provision of the contract that the iron was to be shipped from Glasgow was not a material provision of the contract so far as this controversy was concerned; that the purpose of the contract was the sale by the plaintiffs to the defendant of a certain quantity of iron, to be delivered in a certain time at a certain place, and the fact that it was shipped from Leith instead of Glasgow was not material to the rights of the parties in this case if the other provisions of the contract were complied with, and that if the jury found that it was impossible for the plaintiffs to obtain a vessel from Glasgow, and that it was practicable to obtain one from Leith, and that shipment from Leith was a more expeditious way of getting the iron to New Orleans than waiting for a vessel from Glasgow would have been, then the plaintiffs were justified in shipping the iron from Leith instead of from Glasgow. 9 F. 65.

The defendant excepted to the admission of evidence relating to the shipment from Leith and to the instruction to the jury, and, after verdict and judgment for the plaintiffs in the sum of \$6, 155, sued out this writ of error.

Page 115 U. S. 219

MR. JUSTICE GRAY delivered the opinion of the Court. After stating the facts in the language above reported, he continued:

The contract between these parties belongs to the same class as that sued on in the case just decided of *Norrington v. Wright, ante*, [115 U. S. 188](#) , and likewise falls within the rule that, in a mercantile contract, a statement descriptive of the subject

Page 115 U. S. 220

matter or of some material incident such as the time or place of shipment is ordinarily to be regarded as a warranty or condition precedent, upon the failure or nonperformance of which the party aggrieved may repudiate the whole contract. The provision in question in that case related to the time; in this, it relates to the place of shipment.

The thing sold and described in the contract is "500 tons No. 1 Shotts (Scotch) pig-iron," to be shipped "from Glasgow as soon as possible." It is not merely 500 tons of iron of a certain quality; nor is it such iron to be shipped as soon as possible from any Scotch port or ports; but it is iron of that quality to be shipped from the particular port of Glasgow as soon as possible. The court has neither the means nor the right to determine why the parties in their contract specified "shipment from Glasgow" instead of using the more general phrase "shipment from Scotland," or merely "shipment," without naming any place, but is bound to give effect to the terms which the parties have chosen for themselves. The term "shipment from Glasgow" defines an act to be done by the sellers at the outset, and a condition precedent to any liability of the buyer. The sellers do not undertake to obtain shipment, nor does the buyer agree to accept iron shipped at any other port. The buyer takes the risk of delay in getting shipment from Glasgow or of delay or disaster in prosecuting the voyage from Glasgow to New Orleans. But he does not take the risk of delay or of sea perils which may occur in the course of the different voyage from Leith to the same destination.

One or two illustrations may help to make this clear:

If the sellers had shipped the iron by the first opportunity from Glasgow, the buyer could not have refused to accept it, even if it could have been shipped sooner from

Leith. Again, the buyer would have an insurable interest in the iron during the voyage, by reason of the title which would accrue to him under the contract on arrival and delivery, and of the profits that he might make in case of a rise in the market. 3 Kent, Com. 276; *French v. Hope Ins. Co.*, 16 Pick. 397; *Eastern Railroad v. Relief Ins. Co.*, 98 Mass. 420, 423. But a policy

Page 115 U. S. 221

of insurance upon the iron for a voyage from Glasgow would not cover a voyage from Leith. *Murray v. Columbian Ins. Co.*, 4 Johns. 443; *Manly v. United Ins. Co.*, 9 Mass. 85.

This view of the case renders it unnecessary to consider the other questions raised at the trial and argued at the bar, and requires the

Judgment of the circuit court to be reversed and the case remanded, with directions to order a new trial.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com