

Matsui & Co. v. Brown

**Between
Matsui & Company, and
Brown et al.**

[1919] B.C.J. No. 121

27 B.C.R. 502

British Columbia Supreme Court
Vancouver, British Columbia

Clement J.

Heard: November 7, 1919.
Judgment: November 28, 1919.

Counsel:

Griffin, and Montgomery, for the plaintiffs.
L.J. Ladner, and Cantelon, for the defendants.

1 CLEMENT J.:-- The agreement to buy back the engine, etc., in question here if shipping space for Japan were not secured within one month from the arrival of the goods in Vancouver manifestly was optional so far as the plaintiffs were concerned. In other words, it would be for the plaintiffs to notify defendants that the plaintiffs wished defendants to buy back. And, it seems to me, such notification would have to be made promptly upon the expiration of the month; more particularly in view of market conditions. From the date of the original sale in July down to the announcement of the armistice the market was decidedly a rising market; afterwards, very naturally, the market "slumped." The engine, etc., arrived in Vancouver towards the latter end of July. The month would expire towards the end of August. As to what occurred between that time and November 27th (the date of the next written communication) the evidence is very unsatisfactory, and I cannot find that any request was made by the plaintiffs to the defendants to buy back the engine, etc. It is true that the witness Suge - plaintiff's manager at Vancouver - does say that he kept urging defendants over the phone to secure shipping space; that while he, himself, was using his best endeavours to secure space, he did so "without relieving the defendants of their obligation." But he does not say that he requested the defendants to repurchase, and I cannot find that the election to repurchase upon request was distinctly extended; certainly there was no express extension, and the evidence is not sufficiently clear to warrant a finding of an implied extension. And when written communications again begin, the first letter from plaintiffs to defendants contains the rather strange enquiry: [27 BCR Page504] "Kindly let us know what prospect you have of disposing of the same for us," "the

same" referring to the engine, etc., in question in this action. In my opinion, it was for the plaintiffs to make out unequivocally that, despite a rising market, they had made a demand or request for a repurchase and that any extension of the time within which space was to be secured was accompanied by a clear stipulation, express or by necessary implication, that the time within which a request to repurchase should be communicated should likewise be extended. It seems to me that the plaintiffs refrained, when the market was rising, from making any request for repurchase, but that with the armistice and the consequent break in the market they now endeavour to throw the loss upon the defendants.

2 For these reasons, I think the action must be dismissed, but, in view of the defendants' denial of the agreement to repurchase, and of Capt. Brown's unsatisfactory evidence upon that point as well as others, the dismissal will be without costs.

Action dismissed.

