

NOTE
re : two contracts for materials
to be supplied to the Ministry of Marine
by S. Smith & Son.

FIRST CASE

From the file submitted by the Ministry of Marine, it appears that a contract of sale has been made on the 17th. November 1922 between the Ministry of Marine (the buyer) and S. Smith & Son (the seller) for a supply of materials (Value: Tcs. 20,548.21), delivery to be made before the 1st. May 1923. Clause 2 of the contract specifies that if there is a delay in the delivery of goods, the buyer shall enjoy some compensation as penalty clause.

Now, S. Smith & Son have notified (12th. February 1923) that they cannot perform the contract entered into, and they make request to be relieved from their responsibility under the contract; they propose besides that the contract be executed by another firm in some conditions which they deem satisfactory for the Ministry of Marine.

The position of the Ministry of Marine in law seems very clear. This is a mere breach of contract by the failure of the seller to perform his obligation, whilst there is no fault at all from the buyer. The Ministry of Marine are entitled to decline the cancellation of the contract, and have a full discretion to decline the offer of S. Smith & Son whatever it may be: and they have done so.

In the present case, the position of the Ministry of Marine has clearly been that the buyer refuses to accept the cancellation of the contract; then the contract stands good as it is and binding both parties; in other words, the seller has to perform it and is bound to pay consequently for any delay or damages in such performance. Since clause 2 has provided for the compensations in case of delay, etc., clause 2 shall apply. That is to say finally that:

1) S. Smith & Son shall be fined Tics. 10 per day from the time when the contract was not performed (1st. May 1923) but not exceeding Tics. 1,000; as specified in clause 2 No. a.

2) the Ministry of Marine may buy the materials from another supplier and, if the price was higher than the price agreed with S. Smith & Son, S. Smith & Son would be liable for the surplus of expense; as specified in clause 2 No. b.

3) it is fair that the crossed cheque of Tics. 1,000 which has been delivered to and is kept by the Ministry of Marine as security be not returned but kept as long as the case is not ended, and used for any payment due to the Ministry of Marine under clause 2;

4) if S. Smith & Son do not agree with the above consequences of their failure, it seems clear from clause 5 that the dispute will have to be submitted to arbitrators, and not to a Court of law.

SECOND CASE

From the file submitted by the Ministry of Marine, it appears that the

same firm S. Smith & Son has made a tender for a supply of tools, etc. (value: Tics. 510). Such tender was agreed, but now S. Smit & Son notify also (12th. February 1923) that they cannot perform the contract entered into when their tender have been accepted by the Ministry of marine.

The Ministry of Marine have taken the same position as in the precedent case and refuse to accept the cancellation of the contract. Their position is law is also the same, and, the contract standing good and binding, the seller cannot decline to perform it, and, if he does not perform, shall bear all the consequences provided in clause 4 of the Conditions of Tender.

22nd. May 1923