LINCOLN vs AZZOPARDI *

MR. Azzopardi, a Maltese merchant trading in Malta, offered Mr. Lincoln, a Tunisian merchant, 500 tons of coal for sale ; he also offered to carry the coal from Minorca, Balearic Isles, to Tunis. "Inter alia" in his letter he said : "Any answer must reach me by the 22nd February,1944 : I will not consider an answer received after sate date .... I am leaving Malta within a few days and shall not be back before the 15th February, so that you are completely at your ease almost up to that date." Mr. Lincoln accepted the offer and his registered letter of acceptance which was posted on the 4th February arrived at Mr. Azzopardi's office on the 6th. On the 8th Mr.Azzopardi sent an unregistered letter from Tripoli withdrawing his offer to economic and other considerations "saving all contracts which have been already stipulated". On the 20th Mr. Lincolnsold the coal to a third person and on the latter's suit he was condemned £500 damages for non-performance by a Tunisian Court.

Mr. Lincoln is suing Mr. Azzopardi in a Maltese court :

1. for the performance of the contract and for payment of £500 damages (v.judgement of the High Court of Tunis) ; or

2 .subordinately for payment of £300 damages as "lucrum cessans", besides £500 damages as above on the following grounds:—

a) that the law to be applied is the law of Tunis ;

b) that damages are due according to Art.252 of the Commercial code of Tunis;

c) that as regards performance the contract became complete on the 6th February, date of receipt of the acceptance and hence the withdrawal of the offer was of no effect ;

d) Subsidiary, if the law of Malta were applicable, the offer found not be withdrawn, because the contract became perfect on the 6th February. As regards damages, they are always due by the defendant for his not having registered for his not having registered the letter of the 8th

---

N.B. — Art.252 of the Commercial Code of Tunis reads as follows : "The offeror may withdraw his offer in all cases, except when the contrary has been declared by public act, subject to the payment of damages." The law if Tunis is similar to the law of Malta in all other respects. The law in force at Minorca is in conformity with the law of Malta except as regards the law enacted in Malta on the 15th February,1944.

Sir Philip Pullicino, Kt.. B.Litt.,D.,kindly consented to hear the case.
Counsel for plaintiff : Mr. Pullicino ; Mr E. Mizzi, B.A.
Counsel for defendant : Mr. A. Calleja, B.A.;
Mr. C. Schembri

* * *

Sir Philip Pullicino explained that in this contract the rules relating to contracts "inter absentes" were applicable. The words quoted from Mr. Azzopardi's letter did not give one to understand that the right to withdraw the offer had been given up ; if he had expressly bound

---

* Reported by Joe M . Ganado, B.A.

himself to leave the offer open up to a certain date, there would have been no doubt, but in this case no such words were used and the mere establishment of a time limit could not be interpreted in a way as to imply the renunciation of the right to withdraw the offer.

Sir Philip then proceeded to determine the general principles regulating contracts "inter absents". One must proceed by analogy with contracts "inter presents", he said, and, if one did so, one was sure to come to the conclusion that the knowledge of the acceptance on the part of the offeror was essential before the contract could be perfect. This was admirably illustrated by two cases i.e., by a judgment of the Court of Appeal, Malta, in re "Sammut vs. Gatt" 1.4.87. VolXI.p.290, and, by an example quoted from Merlin (repertoire v. Vente). In a few words this was the example : A. a deaf man, made an offer to B who replied in the affirmative ; but A was unable to catch the answer and pen, ink and paper had to be fetched. During the short interval which elapsed B changed his mind and wrote a curt refusal on the paper. Merlin rightly opined that the contract had not been completed by the previous oral declaration, because the offer never became cognizant of it. For the completion of a contract there had to be the union of the respective wills of the parties having regard to an identical object and manifested at the same time.

In this case, however, although it was ascertained that Mr. Azzopardi was unaware of the acceptance, Sir Philip thought that it was not reasonable to suppose that his business stopped on his departure but rather it was to be presumed that he had left his representatives at his office to carry on his normal business in Malta. We must respect commercial customs, as otherwise commercial activities would seriously handicap. After reviewing the relevant incidents of the case, Sir Philip concluded by saying that the contract had been consummated on the 6th and hence no questions of Private International Law fell to be discussed and revocation of the offer on the 8th was altogether impossible. Even were we to take the hypothesis that the contract had not reached its perfection on the 6th, the letter of withdrawal would have been devoid of any effect on account of its not having ever reached its destination.

It was therefore held that the plaintiff's contentions were well founded. As regards the actual claims Sir Philip opined that either actual execution of the contract or damages could be sued for: the claim for both was inadmissible and hence the subordinate claim for damages i.e. Lm300 "lucrum cessans" and Lm500 (according to judgement of the High Court of Tunis) was allowed.