

[Title]

Defective goods, duty to inspect and notify

[Court of Decision]

Supreme Court

[Date of Decision]

2 December 1960

[Case No.]

Case No. 409 (o) of 1958

[Case Name]

Final Appeal from Claim for Price of Coal Case

[Source]

*Minshu* Vol. 14 No. 13: 2893

[Party Names]

Montjudake Tanko Co., Ltd. (X, Appellee at Court of Last Resort, Intermediate Appellant, Plaintiff)

Vs.

Marui Kaiun Sangyo Co, Ltd. (Y, Appellant to Court of Last Resort, Intermediate Appellee, Defendant)

[Summary of Facts]

Company X (Plaintiff, Intermediate Appellant, Appellee at the Court of Last Resort) was in the business of mining and selling coal. On 12 August 1953 X and Company Y (Defendant, Intermediate Appellee, Appellant to Court of Last Resort) entered into a contract for the sale of 330 tons of coal for the price of JPY 4100 per ton making a total price of JPY 1.353 million of quality 'Monju' washed powdered coal of 6200 calories per kilogram with delivery stipulated for Ainoura Port. On 25 August the 330 tons of coal was delivered to Company at the delivery site in accordance with the contract but for the quality. Company Y's employees were in attendance when Company Y took delivery of the coal and they initially recognized the quality of the coal as being as agreed and accepted delivery. However, after Company Y had transported the coal to Fukuyama Port, when Company A, a non-party to whom the coal was to be resold, was about to take delivery Y realized for the first time, when A pointed the matter out, that the coal was of inferior quality. Company Y notified Company X of that fact at the beginning of September 1953.

As Y had paid only JPY 698,000 of the price of the coal X filed this suit seeking payment of the remaining JPY 665,000 and penalties for the delay in payment of the same from the time of the service of the writ. In response, Y asserted that as the coal delivered by Company X had been of inferior quality in breach of the first contract, Y's client A had refused to take delivery and Y was forced to sell the coal to A at a price reduction of JPY 1000 per ton so that Y lost expected profits of JPY 330,000, the right to claim damages for this loss should be offset against X's right to claim the outstanding JPY 665,000.

At first instance, the court recognized the fact that the quality of the coal had been lower than stipulated in the contract, that as a result of analysis at Company A's plant the coal was found to be at best less than 5600 calories per kilogram and that as a result Company Y was forced to give Company A a considerable discount. The court also rejected the 'right to offset a damages claim' defense as follows, "In a transaction between commercial parties...when the purchaser has accepted delivery of the subject matter, if the purchaser does not immediately inspect the same and when defects are discovered immediately notify the vendor of the same, the purchaser may not claim a discount on the purchase price or damages based on the defects. The quality of the coal that was the

subject matter in this transaction could be easily inspected by analysis and that coal could be mixed with other coal when subsequently resold. This means that the purchaser had to carry out the inspection and notification above immediately after accepting delivery of the subject matter. This being the case it was too late for Y to notify Company X of the poor quality of the coal after that fact was pointed out by Y's client when Y attempted to deliver the coal for resale after transporting the coal subsequent to accepting delivery, and Company Y may not claim damages from Company X on the grounds of the defects in the subject matter."

Y filed a final appeal on the following grounds.

"[Article 526 of the *Commercial Code*] applies only to trade in specified goods and does not apply to transactions involving unspecified goods such as the transaction in this matter. Further, the interpretation that is appropriate for trade between commercial parties, generally speaking, is that in trade in specified goods, if specified goods are delivered this constitutes performance of the obligation in the first instance, however where there is an unforeseen defect or short quantity the *Civil Code* provides remedies in its provisions on the vendor's liability for defects, whereas in the case of trade in unspecified goods where there are defects or the quantity of the subject matter delivered is short, the obligation has not been performed completely and the purchaser is not limited to simply seeking cancellation or damages and may demand that the vendor completes performance. It is accordingly a mistake to apply Article 526 of the *Commercial Code* to transactions for unspecified goods."

[Summary of Decision]

Appeal dismissed.

"The provisions of Article 526 of the *Commercial Code* also apply to trade in unspecified goods and it was therefore appropriate for the lower court to apply that article to the coal transaction."