

[Title]
Seller's Warranty against Defects

[Deciding Court]
Supreme Court

[Date of Decision]
13 March 1925

[Case No.]
Case No. 866 (o) of 1924

[Case Name]
Claim for *Restitution in Integrum*

[Source]
Minshu No. 4: 217

[Party Names]
Appellant in Final Appeal (Defendant, Intermediate Appellant)
Y Shinto Pump Manufacturing Corporation
Vs.
Appellee in Final Appeal (Plaintiff, Intermediate Appellee)
X Kohei Akazawa

[Summary of Facts]
X worked as a subcontractor in relation to restoration works on a bridge belonging to the San'in Railroad, which was destroyed by a flood. X purchased a 12-horsepower turbine pump from Y (Shinto Pump Manufacturing Corporation) to use for the works. However, the engine's ignition device had a hidden defect and the pump did not run, even after Y repaired it. X therefore demanded the rescission of the contract and reimbursement of the purchase price. The lower court allowed X's demand, and Y filed a final appeal. The issue was whether the provisions on warranty against defects were applicable to unspecified goods, as in this case.

[Summary of Decision]
Final appeal dismissed.

“Since when the seller delivers defective goods to the buyer pursuant to a sales contract for unspecified goods, the seller cannot be said to have completely fulfilled his obligation, if the seller provides the buyer with such goods, it is indeed possible for the buyer to refuse to accept the goods, as asserted in argument. However, it is inappropriate to draw the hasty conclusion that such delivery constitutes no performance of the contract at all, regarding it as the same as delivering goods of a completely different type to the object of the contract. Rather, if the goods were received by the buyer, it is proper to understand that the contract was performed, albeit imperfectly. However, if the buyer receives goods knowing that the goods delivered by the seller have defects, unless there are special circumstances, it is understood that the buyer is satisfied with the delivery, and received the goods with the intention of not asserting rights arising out of the defects and, accordingly, the buyer cannot assert the warranty against defects at a later time. If the buyer had no knowledge at that time, it must be said that the buyer may exercise such rights according to the standard of the time of the transfer of risk with regard to the goods. Indeed, not only does the language of Article 570 of the *Civil Code* not restrict its application to sales

contracts for specified goods, and not only is it valid for the seller and the buyer to specify the goods to be delivered under the contract after entering into a contract for unspecified goods, but since the contract is not to be invalidated by reason of the product being defective, that from that point forward, the contract resembles a contract for specified goods, and there is no reason to distinguish specified goods from unspecified goods with regard to the question of whether the buyer should be given a warranty against defects. Even if there was no contract in relation to the selection of the goods for delivery, so long as the buyer received the goods that the seller delivered, then it is proper to state that the contract was performed, albeit imperfectly. It follows that, in this situation, it should be understood that the goods were specified, either when the seller specified the goods with the buyer's consent, or when the buyer completed the necessary acts for delivery, and it follows that if this timing is considered the standard, there is no reason to differentiate sales contracts for specific goods and the treatment of the same in terms of the warranty against defects. If the seller delivered defective goods to the buyer pursuant to a contract for unspecified goods, and it was assumed there was no contract at all, and therefore the issue of warranty against defects did not arise, then the buyer would be able to demand the delivery of additional goods without defects, and the seller too would be able to demand the return of the goods delivered. Moreover, there is no period of exclusion with regard to these rights, such as is prescribed in Article 566(3) of the *Civil Code*, and the parties might therefore remain in uncertainty until the expiration of prescription in relation to the claim or in relation to acquisition of the right of ownership. This would be contrary to the spirit of the *Civil Code*, which prescribes a very short period of exclusion with regard to the warranty against defects by applying the said Article *mutatis mutandis*, and would be completely unacceptable.”