

CADY *v.* TURNBULL.

Opinion delivered January 28, 1905.

SALE—CONSTRUCTION OF CONTRACT.—A contract for the sale of a certain number of gunstocks of specified dimensions, for which a payment of thirty cents each was to be made “on consignment,” and a balance of ten cents on receipt of the inspector’s favorable report, contemplated that if the stock consigned corresponded to the requirements of the contract the seller was entitled to receive thirty cents for each gunstock before inspection, though some of the gunstocks upon subsequent inspection were rejected.

Appeal from Jefferson Circuit Court.

ANTONIO B. GRACE, Judge.

Affirmed.

Taylor & Jones, for appellant.

White & Alheimer, for appellee.

BATTLE, J. John Turnbull sued H. G. Cady for the price of lumber furnished or delivered to the defendant under the following contract:

“Articles of agreement made and entered into this 24th day of March, 1899, between John Turnbull, of the county of Lincoln, and State of Kentucky, of the first part, and Henry G. Cady, of Pine Bluff, Ark., Witnesseth: That the first party hereby agrees to

deliver on or before June 1, 1899, at.....station, on
.....in the State of Kentucky, one carload of black
walnut gunstocks, containing 2,500 or more gunstocks per car, for
which said party of the second part agrees to pay first party forty
cents each as follows: Thirty cents each upon consignment to
United States armory at Springfield, Mass., the balance to be
promptly paid upon receipt of and in accordance with the inspector's
reports from said armory, which report shall accompany said final
payment of forty cents each for all gunstocks so accepted by said
armory, second party paying all freight. Said gunstocks shall be
straight grained, free from sap, knots, checks, wormholes or other
visible defects, shall be two and three-eighths inches thick through-
out; one and three-fourths inches wide at small end, and six inches
wide at butt; length fifty-two inches; if green, ends to be painted and
conformed to pattern furnished by second party."

In compliance with this contract, plaintiff shipped for the
defendant, at Crab Orchard Station, in Lincoln County, Kentucky,
on the Louisville & Nashville Railroad, 2,500 gunstocks, or more,
to the United States armory at Springfield, Mass. According to the
preponderance of the evidence, they were of the description stipulated
in the contract. The jury in this case so found, and returned a
verdict for the plaintiff for \$765, and the defendant appealed.

Two thousand and five hundred gunstocks were shipped to the
United States armory at Springfield, Mass. There was no contro-
versy about the shipment being in time, the parties agreeing upon
the time when they were actually shipped. The thirty cents each
to be paid on consignment to the United States armory was not made
dependent by the contract upon any inspection, but upon the gun-
stocks shipped being such as are described in the contract. The ten
cents for each, the remainder of the stipulated price, was to be paid
upon the receipt of the inspector's report from the armory. The
thirty cents were due before any inspection could be made at the
armory, and, of course, was not dependent upon it. The jury allowed
only thirty cents for each gunstock delivered, and there is evidence
to sustain their verdict.

Judgment affirmed.

HILL, C. J., (dissenting). The contract in question is inartistically and untechnically drawn, and literally bears the interpretation placed on it by the court. When taken together, however, and in connection with the working construction placed on it at the time the gunstocks were rejected, before any controversy arose between the parties, it seems clear that the parties intended that the payment for the gunstocks was to be subject to the action of the United States armory authorities in accepting or rejecting them. The payment of thirty cents was to be an advance, ten cents being reserved till acceptance, evidently under the belief that that sum would cover rejected articles; and it should have done so, under an honest and intelligent performance of the contract.

McCULLOCH, J., concurs herein.
