

OTTO & OTTO

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Reasley v Hart, 65 Cal. 522

Green v Covilaud, 10 Cal. 507

Smith v Lewis, 24 Conn. 454

Hammond v Gilmore, 14 Conn. 459

Rees v Atwater & Co., 13

April 24<sup>th</sup>, 1915

Mr. W. F. Main,

Iowa City, Iowa.

Dear Sir:-

I have your letter of the 23rd. instant and note its contents. By way of reply thereto, permit me to state that it is the law that conditions precedent call for the performance of some act or the happening of some ~~ext~~ extent after a contract is entered into, and upon the performance or happening of which its obligations are made to depend.

In the contract-order of the Boston Piano & Music Company, it is plainly stated that the Assurance of Trade clause is effective only when the dealer makes satisfactory proof of and complies with the terms of his order, as well as paying his promissory notes when the same are due.

The failure of the merchant to perform, in the manner and at the time stated, that part of the contract-order imposed upon him would be a complete bar to any claim on his part under the Assurance of Trade clause. It is the law that a failure of a party to a contract to discharge and perform the terms thereof, which are conditions precedent, will relieve the other party from liability thereon. In other words, one party cannot maintain an action against the other without showing performance or tender of performance on his part. So that the merchant at once relieves the Boston Piano & Music Company from liability on its Assurance of Trade clause when he permits any of his notes to go to protest, or in any other material way does not perform the terms and conditions of his contract-order with this company. The Boston Piano & Music Company, by its contract with the retailer, makes the performance of its promise in regard to Assurance of Trade conditional upon the prior performance by the retailer performing in all respects his terms of the contract, and the retailer cannot sue the Boston Piano & Music Company for a breach of this Assurance of Trade clause without averring and showing that he has performed on his part all of the terms and conditions of said contract-order.

The following are the authorities by states on such proposition: ALABAMA: Kirkland v Oates, 25 Ala 465  
Drake v Goree, 22 Ala 209  
Davis v Adams, 12 Ala 264

ARKANSAS: Haney v Caldwell, 43 Ark. 184  
Humphries v Goulding, 3 Ark. 581  
Manuel v Campbell, 3 Ark. 324