J A M A I C A

IN THE COURT OF APPEAL

R.M. COURT CIVIL APPEAL 29/65

BEFORE: The Hon. Mr. Justice Duffus, President
The Hon. Mr. Justice Waddington
The Hon. Mr. Justice Shelley (Acting)

BETWEEN C L E O P H A S B U C K L E - PLAINTIFF/RESPONDENT

A N D C O R B E T T D U N K L E Y and C L E V E L A N D C L A R K E - DEFENDANT/APPELLANTS

Mr. Z. Khan for Defendant/Appellants

Mr. R.N.A. Henriques for Plaintiff/Respondent

24th February, 1966.

SHELLEY, J.A. (Acting)

The plaintiff/respondent Buckle filed an action against the defendant/appellant for trespass and conversion.

The defences raised at the trial were:-

(i) There was no trespass;

(ii) There was no conversion because there was a sale by the plaintiff to the defendant, Dunkley, and whatever was done, was in accordance with his rights under the sale.

These defences were raised after Counsel for the defendant took a preliminary objection that the trial could not proceed because the claim was based upon facts which disclosed a felony. This preliminary objection was overruled apparently after facts were heard by the learned Resident Magistrate. The learned Resident Magistrate at the end of the hearing gave judgment for the plaintiff/respondent for the sum of £48, for the conversion only.

The facts of the plaintiff's case were very simple. He had a bull tied on his premises at Joe Hut in Trelawny. The defendant, Dunkley, the appellant came there and invited

him to sell.....

him to sell the defendant/appellant his bull. The plaintiff/respondent showed this bull to the defendant/appellant and said he wanted £48. for it. The defendant/appellant counter-offered by saying that he was willing to buy in effect, not by paying £48. for it but by weight. The plaintiff/respondent did not agree to this. This took place on Thursday, the 12th of November. Later-on that day, Cleveland Clarke, a servant of the defendant/appellant saw the plaintiff, and told him that the defendant/appellant wanted to know what about the cow, 'if he is going to get it again', and the plaintiff/respondent then said: 'go and tell him I am not doing any business with the cow.'

Now on the 13th of November, the plaintiff/respondent got certain information and discovered that his bull had been removed from where he had left it. He went to the defendant/appellant's butcher stall, and there he saw his animal being skinned and ~~he, the plaintiff/respondent says that~~ the defendant/appellant said that he had gone and taken it, whereupon the plaintiff demanded £48.

The evidence is that subsequent to that the defendant/appellant made some attempt to pay him money, not £48, but a sum which would be equivalent according to the defendant/appellant, to the price according to weight. In cross-examination, the plaintiff/respondent said after the defendant/appellant agreed to buy the cow - 'he agreed to buy the cow from me by weight: I didn't agree to sell him this cow by weight.' - He had bought on a previous occasion some other animal, apparently by weight - 'The business was not finalised on the 12th of November between us. I was charging him £48 for the animal.' Further on he says 'if he had agreed to pay £48. he could have removed the animal from my land.' That, shortly, is ~~what~~ the plaintiff's case.

The defendant's case at the trial was that the plaintiff/respondent agreed to sell by weight, and that he had arranged with the plaintiff to send Cleveland Clarke (that is the same person who attended on Buckle at 5 p.m. on

/the 12th of...

the 12th of November after this conversation had taken place in the field) for the cow the following morning. However, the defendant/appellant said that on that following morning he saw the cow on his own land and he took possession of it and butchered it. He did not remove it from the plaintiff/respondent's land. He said that he offered and in fact took to the plaintiff/respondent £37.16/- which would have been the price according to his calculations by the weight.

On those facts, the learned Resident Magistrate found that the plaintiff did not agree to sell the bull by weight, that there was no final agreement between him and the appellant before it was slaughtered. He found that there was no contract of sale, there was no concensus ad idem. He found that there was no trespass, there was no proof of trespass because there was no evidence that the animal had been removed from the plaintiff's land by the appellant. He was satisfied that the appellant wrongly took the plaintiff's bull and converted it to his own use, and for those reasons he gave judgment for the plaintiff, as I have said before, against the appellant for £48 with costs.

Mr. Khan, learned Counsel for the appellant, has argued two grounds of appeal. He argued first the second ground set out in his grounds of appeal, namely, 'that the learned Resident Magistrate misdirected himself in holding that the defendant, Corbett Dunkley was guilty of conversion.' He makes the point that the plaintiff/respondent said that the appellant could have removed the animal if he had agreed to pay £48, that this statement amounted to what he called an agreement to sell, under Section 2 of Chapter 349 of the Sale of Goods Law; and the point he makes is this, that the plaintiff having said that the defendant/appellant could have removed the cow, if he had agreed to pay £48, upon defendant/appellant's removal of the bull, he impliedly agreed to pay £48, and that there was in fact an agreement for sale.

We have considered that ground very carefully.

/Was there a....

Was there a contract of sale, or was there an agreement to sell, or an actual sale, and we have come to the conclusion that there was none. The appellant invited the plaintiff/respondent to sell him his bull, and the plaintiff/respondent then offered to sell it for the sum of £48. The defendant/appellant counter-offered by saying he would purchase, but by weight, not by paying £48. Clearly, from the evidence the plaintiff/respondent did not accept that counter-offer, and his original offer of sale for £48. was therefore revoked.

It is also clear from the evidence that up to the time they parted there was no contract, there was no agreement for sale, there was no consensus ad idem, as was properly found by the learned Resident Magistrate, and that ground therefore fails.

Learned Counsel has also argued that this claim was based upon facts which amounted to a felony, which ought to have been prosecuted before the hearing of the civil suit. This ground, we take it, is argued in the alternative because it cuts across the ground that was previously argued. The plaintiff/respondent in this matter reported the facts to the police, and the policeman allegedly sent him away - having advised him to try to settle the matter. To put it shortly, the plaintiff/respondent took what steps could be required of him and properly reported this matter to the police. The police did not think that the facts justified their acting upon them, and the plaintiff took no steps to prosecute for a felony.

It seems to me, and I think that is the view of all of us, that this policeman acted most intelligently. Clearly, in these circumstances, it would have been a very dangerous thing, indeed, for him to act along the lines that a felony had been committed.

We think that there was first of all no grounds upon which the police should have proceeded on a charge of larceny, and secondly we think also that the plaintiff acted

/reasonably, and....

reasonably, and that there was a good excuse for failure, if I may put it that way, to take criminal action in this matter. That ground also fails. The appeal is therefore dismissed - Costs to the plaintiff/respondent £12.

DUFFUS, P.,

I agree with the judgment of my learned brother, Shelley. I have nothing to add to his reasoning, but I do wish to say that I think the learned Resident Magistrate arrived at the only conclusion that he could have arrived at on the evidence in this case. I also desire to say that I think the reasons given by the learned Resident Magistrate are excellent reasonings, very clearly set out and very nicely expressed, and I think that some commendation is necessary in cases of this complicated nature.

WADDINGTON, J.A.,

I agree with the judgment.