

C.A. Contract for sale of goods — Oral contract — Error in charge slips listing goods and prices — whether charge slips represented contract — whether ^{defendant} not liable as he had discharged price on charge slip — no evidence finding of fact by Resident Magistrate in giving judgment for plaintiff on oral contract unreasonable.

JAMAICA

[C.A. — "wholly unimpeachable appeal." — ~~Dismissed~~]

IN THE COURT OF APPEAL

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RESIDENT MAGISTRATE'S CIVIL APPEAL NO. 9/88

BEFORE: THE HON. MR. JUSTICE CAREY, P. (Ag.)
THE HON. MR. JUSTICE FORTE, J.A.
THE HON. MISS JUSTICE MORGAN, J.A.

No case referred to

BETWEEN

AUDLEY GRAY

PLAINTIFF/RESPONDENT

AND

KENNETH LETTS

DEFENDANT/APPELLANT

Horace Edwards, Q.C., for Appellant

D. Adidipe for Respondent

September 29, 1988

CAREY, P. (Ag.):

This is an appeal against a judgment of His Honour Mr. N.L.V. Sang, Resident Magistrate for the parish of Manchester, sitting in Mandeville on the 20th of January, 1987, whereby he gave judgment for the plaintiff in an action for the balance owing on goods sold and delivered.

The short facts are that the plaintiff sold the defendant Letts a quantity of items which were charged on an account. There were some discussions as the plaintiff testified in evidence with respect to the price at which the goods were to be sold, because it appeared that the defendant was going into business for the first time and desired to be given some discount. Unfortunately for the plaintiff, the Charge Slips which were prepared by his wife were prepared inaccurately. The charge slips were put in

evidence. There was one which showed 3 cases of Brunswick sardine, total amount \$99.50. That was an error because that represented the price of one case. Then there was another note on the charge slip, viz., 2 cases Nestles milk stated as \$123.00. That again was an error because what was being represented was the price of one case. There was also a similar error in regard to a case of Betty condensed milk where the slip showed two cases as being priced at \$115.50.

The defendant admitted receiving the goods and there was no dispute that the total amount, so far as price went on the bill, was discharged by the purchaser.

When the plaintiff discovered that there were these errors, he communicated this fact to the defendant, who demurred, hence the action which came on for trial before his Honour Mr. Sang.

The learned Resident Magistrate was wholly unimpressed by the evidence given by the defendant. There was a sharp conflict of fact. While the plaintiff stated in his evidence that there were some discussions as to the price at which the goods would be sold, the defendant stated to the contrary.

The learned Resident Magistrate having seen and heard the witnesses, preferred the evidence given by the plaintiff. Now that would be enough to dispose of the case because this Court would hardly interfere with such a finding of fact.

What has been argued before us, however, by Mr. Edwards is that as the charge slips represented the contract, all the terms were therein contained and the defendant could not be held liable because he had discharged the stated price. That cannot be right. The charge slips did not create any contract. The contract between the parties was an oral contract made before the charge slips were prepared. The charge slips listed the items sold, or recorded the terms, if you wish, of the contract, but plainly there were errors and the learned Resident Magistrate so found. That was a finding of fact. There was no argument put forward before us which we can accept to show that that finding was unreasonable.

In my view, this is a wholly unmeritorious appeal which cannot succeed and I would dismiss the appeal and affirm the judgment of the Court below with costs.

FORTE, J.A.:

Having heard the reasoning of my learned brother, Carey, P. (Ag.), I concur and have nothing to add.

MORGAN, J.A.:

I agree.

CAREY, P. (Ag.):

Appeal dismissed. Judgment of the Court below affirmed. Costs of appeal found at \$50.00.