JAMAICA

IN THE COURT OF APPPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL NO:14/91

COR: THE HON. MR. JUSTICE WRIGHT, J.A
THE HON. MR. JUSTICE FORTE, J.A
THE HON. MR. JUSTICE BINGHAM, J.A (AG.)

BETWEEN	RUPERT RICHARDS	DEFENDANT/APPELLANT
A N D	YVONNE ALEXANDER	PLAINTIFF/RESPONDENT

Mr. Horace Edwards, Q.C., instr. by Owen S. Crombie

Mr. Lawrence Haynes instructed by Perkins Grant, Stewart and Phillips for the Respondent

4th, 5th June and 9th July, 1991

FORTE, J.A

This is an appeal from the judgment of the Resident Magistrate for the parish of Manchester, in which he gave judgment for the plaintiff in the sum of $3,000 with costs to be agreed or taxed. In her plaint, the respondent claimed as follows:-

> "The plaintiff's claim is to recover from the defendant the sum of three thousand dollars ($3,000.00) being cash advanced by the plaintiff to the defendant in September 1988 for electrical work done at Kendal in the parish of Manchester which the defendant refused to do despite repeated request by the plaintiff."

In answer to the plaint, the appellant through his attorney stated the defence on two limbs, the first of which is not the subject of appeal, and will not be dealt with in this judgment. The second which forms the gravamen of the complaint before us is as follows:-

> "In addition or in the alternative defendant says that he is not a licenced electrician therefore the contract is illegal and void with usual consequence that it cannot be specifically enforced or money paid on it can't be recovered."

The facts upon which the learned Resident Magistrate came to his decision are very simple and brief. The respondent, at the relevant period was in the process of building a house in Walderston, when the appellant approached her on two occasions soliciting the contract to do the electrical work on the house. In the respondent's words he wanted the contract to "wire the house". To his request the respondent reacted "after you not an electrician you are a man that plant coal." Nevertheless, the appellant allayed her fears, by informing her 'I do two jobs'. In the security of that answer, the respondent entered into an agreement with him for the job to be done for a total of $3,000; $1,200 of which she advanced immediately. Subsequently, she gave him $900 on each of two separate occasions as a result of reasons advanced by him for so doing. In the end she had paid him all of the agreed sum with very little work done in return. On request to him for the return of her money, she was met by indecent and abusive language, and words which left no doubt that he had no intention of continuing to work on the house. As the appellant refused to do anymore than the little he had done, the respondent had to engage the service of someone else to do what she had already paid him to do.

At the end of the plaintiff/respondent's case the attorney for the defendant/appellant made a no case submission which did not meet with favour, and judgment was entered against the appellant. The learned Resident Magistrate in his reasons in relation to the 'second limb' of the defence which formed the basis for the no case submission, and the ground for this appeal states thus:-

> "At the end of the plaintiff's case the defendant's Attorney moved for judgment for defendant on Second Limb of defence stated to which the plaintiff's Attorney replied. The defendant's attorney adduced no evidence in support of the

> defence stated and rested on his submission. It is noted that the defendant did not counterclaim for work done or render an account of the materials purchased."

On the 4th and 5th June, 1991, we heard the arguments of counsel and dismissed the appeal with costs to the respondent fixed at $500. These now are our promised reasons for so doing.

Before us, Mr. Edwards for the appellant argued one ground of appeal, that is:-

> "1. There was a mistrial in that the learned Resident Magistrate did not apply his mind to or adjudicate upon all the essential issues with particular reference to -
>
> (a) The second limb of the defence."

This ground, as worded could be disposed of quite simply. The learned Resident Magistrate from the words referred to in his reasons, did give consideration to the defence advanced, but found that in the absence of evidence to prove that the appellant was in fact unlicenced, the defence must fail. Mr. Edwards has, however, pointed out that in the cross-examination of the respondent, she did say "Defendant did tell me he was not licenced." There was no further evidence to clarify that statement in respect of the time when the respondent gave her that information. It was therefore evidence which could be of no assistance in determining whether the respondent was in fact unlicenced, and if so that that information was known to the appellant at the time of the agreement. The learned Resident Magistrate was therefore correct in his conclusions that there was no evidence to support a finding in favour of the appellant on that limb of his defence.

Mr. Edwards was, however, allowed to develop his argument and in doing so he expanded the ground on the basis of the appellant being unlicenced. He contended that because of that fact, the contract is illegal and consequently the respondent cannot succeed

as the Court can give no relief in such circumstances.

The requirement for having a licence to perform this kind of work is within the provisions of section 35 of the Electric Lighting Act which reads as follows:-

> "No person other than a licensee under this Act or any enactment incorporated herewith shall make or cause to be made any installation of wires or fittings of any kind or extent for electric light or power, house-telephones or electric bells, unless such person has been duly licensed by a Board of Examiners of not less than three persons appointed by the Minister; and the Minister may make regulations with respect to the composition, hours, duties and procedure of the Board of Examiners and with respect to the licensing of persons under this section, the examination to be passed by any candidate for such licence, the examination fee to be paid by such candidate, the suspension and cancellation of licences, the inspection of any work done under any licence so granted and generally for securing the safety of the public from personal injury or from fire or otherwise in respect of installations of the nature herein specified and may attach to the breach of any such regulations a penalty of ten dollars, recoverable on summary conviction before a Resident Magistrate."

In the case of Kiriri Cotton Co. Ltd., v. Dewani (1960) 1 ALL ER 177 where a tenant had paid over 'premium money' to the landlord in order to obtain the sub-lease of a flat in Kampala, Uganda, and where such an act was illegal by virtue of the Uganda Restriction Ordinance, the tenant sued and recovered the money so paid. On appeal to the Privy Council it was held:-

> "...the duty of observing the law being placed by section 3(2) on the shoulders of the landlord for the protection of the tenant, the parties were not in pari delicto, and, therefore, though the illegal transaction was an executed transaction, the tenant was entitled at common law to recover the premium as money had and received to the use of the tenant."

In delivering the judgment of the Board, Lord Denning (at page 180) in explaining the dicta of Lord Ellenborough in Langton v. Hughes (1813) 1 M & S at page 596, viz, "What is done in contravention of ... an Act of Parliament, cannot be made the subject-matter of an action", stated as follows:-

> "In considering the validity of this reasoning, their Lordships would point out that the observation of Lord Ellenborough, C.J., was made in a case where a party was seeking the aid of the court in order positively to enforce an illegal contract. It should be confined to cases of that description. His observation has no application to cases such as the present where a party is seeking to recover money paid or property transferred under an illegal transaction. In such cases, the general principle was stated by Littledale, J., in Hastelow v. Jackson:
>
> 'If two parties enter into an illegal contract, and money is paid upon it by one to the other, that may be recovered back before the execution of the contract, but not afterwards.'
>
> In accordance with this principle, so long as the illegal transaction has not been fully executed and carried out the courts have in many cases shown themselves ready to entertain a suit for recovery of the money paid or property transferred."

In the instant case, the appellant is said to have commenced the work, but there is no clarity in the evidence in respect of how much of the work he had done. Nevertheless, even if it can be said that the contract had been executed, the respondent would nevertheless be entitled to recover her money if both parties were not pari delicto at the time of entering into the contract. This view is supported by further dicta of Lord Denning in the Kiriri Cotton case (supra) at page 180:-

> "It is clear that, in the present case, the illegal transaction was fully executed and carried out. The money was paid. The lease was granted. It was and still is vested

> in the plaintiff. In order to recover the premium, therefore, the plaintiff must show that he was not in pari delicto with the defendant company."

Where the contract is in breach of a statute, and that statute is designed for the protection of persons from the conduct of others then the Courts may intervene to allow the plaintiff to recover moneys paid to the defendant.

In the words of Lord Denning (page 181) -

> "If there is something in the defendant's conduct which shows that, of the two of them he is the one primarily responsible for the mistake - then it may be recovered back. Thus, if as between the two of them the duty of observing the law is placed on the shoulders of the one rather than the other - it being imposed on him specially for the protection of the other - then they are not in pari delicto and the money can be recovered back."

There can be no doubt that the purpose of requiring that ... "no person other than a licensee ... shall make or cause to be made any installation of wires or fittings of any kind or extent for electric light or power ..... unless such person has been duly licensed" .... must be for the protection of the users of the object of such installations, for example, a householder or worker in a commercial building or factory.

Indicative of this, is the power given to the Minister under the same section 35 to make regulations with respect to, inter alia, the licencing of persons, and generally for securing the safety of the public from personal injury or from fire or otherwise in respect of installations of the nature specified in the section.

The Statute, the breach of which, the appellant contends creates the illegality of the contract, is therefore one designed for the protection of the public or the beneficiaries of the

installation of wires, etc., and consequently, the appellant when entering into the agreement well knowing that he was in breach of the Statute, could never be deemed to be in pari delicto with the respondent, whose interest the very statute sets out to protect. Additionally, his words of assurance, "I do two jobs" could well be said to be calculated to mislead the respondent when he ought to have known better. The parties not being pari delicto, I would hold that in all the circumstances, the respondent was entitled to the return of her money. For those reasons I agreed to the dismissal of the appeal and that the judgment of the Court below should be affirmed.

WRIGHT, J.A

I agree.

BINGHAM, J.A (AG.)

I entirely agree and have nothing to add.