

433

IN THE FIJI COURT OF APPEAL

At Suva

Criminal Jurisdiction

CRIMINAL APPEAL NO. 101 OF 1985

(On appeal from the High Court of Fiji)
(at Lautoka in Civil Action No. 50 of 1985)

BETWEEN:

SURENDRA PRAKASH
(trading as 'Robina Tailoring Centre')

APPELLANT
(Original)
(Defendant)

and

RANGITIKEI PRODUCE DISTRIBUTORS LIMITED

RESPONDENT
(Original)
(Plaintiff)

Mr M. Raza for the Appellant
Mr S. Parshotam for Respondent

Date of Hearing : 18th March, 1992
Date of Delivery of Judgment : 19th March, 1992

J U D G M E N T

The Appellant ordered from the Respondent a quantity of onions and potatoes and issued two Bills of Exchange by way of payment, one for NZ\$21745.00 and the other NZ\$21717.50. Both bills were dishonoured on presentation.

The Appellant filed a statement of defence to the Respondent's claim denying liability and seeking to rely upon the defence of absence of merchantable quality. The Appellant also counter claimed upon the allegation that the goods arrived in damaged and deteriorated condition.

The Respondent applied for Summary Judgment on the basis that the claim was established and that there was no defence to it. Judgment was entered accordingly for F\$24137.67 with interest of 13½% from 11th February 1985 being the date of issue of the proceedings. From that judgement the Respondent now appeals.

The grounds of appeal are:

- (i) that the Judge erred in fact and in law in not considering the counter claim of the Appellant;
- (ii) he erred further in not giving due consideration to the defence of non-compliance with the Sale of Goods Act.

This was a straight forward action founded on the two Bills of Exchange. There was no doubt at all that these bills were accepted by the Appellant and were dishonoured on presentation. It is clear that there were several promises by the Appellant to pay the amounts owing under the bills.

The Judge in the Ruling appealed from has observed that it could be no defence to an action upon the bills that the goods when received were defective. For that proposition he relied upon the case of James Lamount & Co. Ltd. v Hyland Ltd (1950) IKB585.

Upon the appeal it was argued for the Appellant that this case was not conclusive and needed to be considered in the light of the earlier case of Morgan & Sons Ltd v. Martin Johnson & Co. Ltd (1948) 2A11ER916. That case suggested that a different procedure should be applied, namely one which involved giving unconditional leave to defend. The case of Morgan & Sons however was discussed by the Court of Appeal in the Judgement, in the Lamount case and was not then accepted as applying in the circumstances which existed in the later case.

The present case is however similar in its facts to the James Lamount case, and of particular significance is the passage in the judgement of Roxburgh J delivering the judgement of the Court at page 590, where, after having considered Morgan's case he said:

"The question raised in the present appeal is whether this rule applies to an action between immediate parties to a Bill of Exchange where the matters relied upon by the defendant afford no defence under the Bills of Exchange Act.

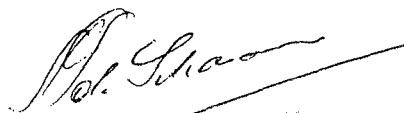
In such case, although it is not easy wholly to reconcile the authorities, a rule more favourable to the Plaintiff has in general prevailed, the court treating the execution of a Bill of Exchange as analogous to a payment of cash, or as amounting to an independent contract within the wider contract in pursuance of which it was executed, and not dependant as regard it's enforcement on the due performance of the latter."

More recently the Court of Appeal of New Zealand has stated the principle again with considerable clarity. In *International Ore and Fertilizer Corporation v East Coast Fertilizer Co. Ltd.* (1987), 1 NZLR 9, Cooke J said at 14:

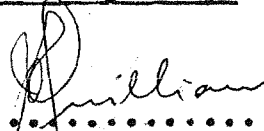
"Generally speaking, even between the immediate parties, bills of exchange are to be treated as the equivalent of cash. Except for a total or liquidated partial failure of consideration, a breach of a background or underlying contract by the Plaintiff does not afford^d the Defendant a defence to an action on a writ, even when the action is between immediate parties."

We consider this passage to be applicable in the present case because it was based upon there being immediate parties to the Bills of Exchange and to which there was no defence. There is no suggestion in this case that there was a total failure of consideration.

In view of the decision to which we have arrived upon this first ground of appeal it is unnecessary to consider the other ground as to non-compliance with the Sale of Goods Act because that could not affect the outcome. We should mention however that there is no evidence apparent on the record as to the delivery of documents in respect of the transaction of sale. For these reasons the appeal is dismissed with costs.



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(Sir Moti Tikaram)
Presiding Judge



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(Sir Peter Quilliam)
Judge of Appeal



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(Arnold Amet)
Judge of Appeal