1921

MORRIS HEDSTROM LIMITED v. JOHN BURNS AND COMPANY LIMITED.

plaintiffs that the first clause of the contract allowed a large margin as to weight—from 1,500 to 2,000 tons—and that the sellers need not have specified the weight further than this, but I cannot accept this view; though of course the nett shipping weight must be within the limits prescribed by the contract.

This was a joint venture: the copra of plaintiffs, defendants, and Messrs. Brown & Joske was, under the Suva contract, to be shipped in bulk and sold on joint account, and whether defendants were, strictly speaking, agents of plaintiffs or not (plaintiffs in their reply plead that they were not), I am of opinion that the deduction of £60 was properly made and that plaintiffs must bear this share of the loss due to short delivery.

On the matters in issue I therefore give judgment as follows:

1. I allow defendants' claim of £60 10s. 5d. for loss through short delivery.

2. Defendants are entitled to deduct freight on the weight as ascertained at the port of destination and not on the shipping weights.

3. Defendants are entitled to deduct insurance on selling price, less freight, plus 5 per cent.

4. Defendants are entitled to deduct exchange on the amount advanced plus insurance, not including insurance on freight.

Judgment for plaintiffs for £935 5s. 10d. with costs.

1921.
Dec. 23.

[APPELLATE JURISDICTION.]

[ACTION NO. 11, 1921.]

RAGHUBAR *v.* PIARI LAL.

And in the matter of an appeal of Raghubar from the conviction of Ernest Arthur Barnett, Esquire, District Commissioner for the district of Ba.

Application of section 29 of Ordinance 5 of 1876 in cases where

(i) the ownership of goods is in dispute;
(ii) whether the word "goods" includes cattle; and
(iii) meaning of the word "owner."

Held, (1) wording of the section wide enough to include case where ownership of goods is in dispute;
(2) the word "goods" includes "cattle"; and
(3) "owner" includes "person entitled to possession."

Conviction amended by insertion of the word "due" before "notice" and by striking out the penalty imposed thereby.

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RAGHUBAR v. PIARI LAL.

C. S. DAVSON, C.J. The grounds of appeal are:—

1. The conviction is void in law.
2. There was no evidence to support the conviction.
3. That the conviction was against the weight of evidence.

I will take the second and third grounds together, and it is sufficient to say that although there was a conflict of evidence there was ample evidence, if the Magistrate believed it, to justify his finding on the facts, and I am not prepared to say that he was wrong in believing it.

The first ground is very vague and does not give any indication of the points relied on, but I will deal, so far as seems necessary, with the points raised in the argument of counsel.

It was contended that section 29 of Ordinance 5 of 1876 under which these proceedings were taken is intended for cases of detention by a bailee or lienee and does not apply where ownership is in dispute. If this were so the Magistrate would hardly be empowered to inquire into the " title " of the goods, and I am of opinion that the wording of the section is wide enough to include such a case as this.

It was also contended that the word " goods " in section 29 does not include cattle. This section is, to all intents, identical with section 40 of 2 and 3 Vic. C. 71, and it has been held that in that section goods includes " dogs " (*R.* v. *Slade*, 57 L.J., M.C., p. 120). I hold that " goods " includes cattle.

Incidentally I may point out that this case also shows that cases involving the question of ownership are covered by this section.

Another point taken was that section 29 provides that the Magistrate may order the goods to be delivered to the " owner," and that the owner is not plaintiff but Mr. Herrold, who holds a Bill of Sale for the cattle. The section must be read as a whole; it begins by providing that complaint may be made by any person entitled " to the property or the possession " of goods. When therefore it provides that on such complaint the Magistrate may order the goods to be delivered to the " owner," I am satisfied that the word must be interpreted as including " person entitled to possession;" the drafting is, perhaps, open to criticism, but any other interpretation would deprive a person claiming mere " possession " of any benefit under the section; he would have the right to claim, but no right to succeed, though he should prove his claim.

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RAGHUBAR v. PIARI LAL.

The conviction, or as it really is, order, was impugned on the ground that the word " due " does not appear before the word notice; it is also absent from the complaint, but no objection was taken at the hearing and no prejudice could have been caused by its absence. I amend the order by inserting it.

I concur in the contention for appellant that the order should not have contained the infliction of any penalty for non-delivery. The procedure under this section is an unusual one and the steps to be taken might be much more clearly indicated. The order should have been simply for the delivery of the " goods " and on failure to deliver a further summons could have been issued calling on defendant to show cause why he neglected to deliver. On this, after hearing the parties, the Magistrate would be empowered to order payment of their value, and this order could be enforced under section 45 of Ordinance 4 of 1876.

I amend the order made by the Magistrate as above indicated and remit the case to the District Commissioner with the opinion above expressed.

I allow no costs.

1922.
Jan. 25.

[APPELLATE JURISDICTION.]

[ACTION NO. 1, 1922.]

MANOHAR *v.* LUCCHINELLI.

Guilty knowledge—obtaining money by means of a worthless cheque.

Held, fact that appellant had made a statement to the police denying any such transaction with the cheque as alleged by the prosecution was evidence which the Court could properly take into consideration in arriving at the conclusion that the appellant acted with a guilty mind and fraudulent intent. (Re Pinter, 17 Cox 497).

C. S. DAVSON, C.J. This is an appeal from a conviction for obtaining money by false pretences. The case for the prosecution was that appellant obtained money from a tailor, Natali, by means of a worthless cheque which he fraudulently represented as being good and valid, well knowing that it was not good and valid.

The grounds of appeal are, substantially, that the evidence does not support the conviction, that a certain statement said to have been made by appellant was wrongly admitted, and that the punishment was excessive. There is clear evidence