

IN THE SUPREME COURT
OF THE TERRITORY OF
PAPUA AND NEW GUINEA

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Civil Jurisdiction
At Port Moresby

9th November, 1961.
9.25 a.m.

PERCIVAL JOHN McDONALD

v.

SELWYN ALLEN MARMADUKE HEATH

JUDGMENT OF HIS HONOUR MR. JUSTICE OLLERENSHAW.

In this action the Plaintiff seeks to recover the sum of £350 as the price of a refrigerator, sold and delivered by him to the Defendant.

The Defendant denies that he bought the refrigerator.

The issue, as accepted and contested before me was whether, on the one hand, the conversations between the Plaintiff and the Defendant, and his wife, at the Plaintiff's property at Sogeri completed a sale of the refrigerator, at the price of £350, or whether, on the other hand, these conversations amounted to no more than an offer by the Plaintiff to sell the refrigerator to the Defendant at the price of £300.

It was not disputed for the Defendant, as indeed it could not be, that if the Plaintiff's version of the conversations were correct, there had been a sale of the refrigerator by the Plaintiff to the Defendant.

It was, likewise, not disputed by the Plaintiff that,

if the Defendant's version of these conversations were correct, a sale had not taken place.

The Plaintiff subsequently delivered the refrigerator (which was frequently referred to in the evidence as a refrigeration unit consisting of a cabinet, compressor and motor) to the Defendant at his place of business at Boroiko.

The Plaintiff maintained that this delivery was made in pursuance of a contract of sale and constituted acceptance and receipt of the refrigerator by the Defendant.

The Defendant did not dispute that, if such delivery were made in pursuance of a contract of sale, it constituted acceptance and receipt of the refrigerator by the Defendant, but, the Defendant maintained, as part of his case, that the refrigerator was taken by the Plaintiff to the Defendant's place of business for the purpose of a test of the refrigerator, as a working unit, a test which the Defendant maintained that he required for the purpose of giving his consideration to, what he claimed, was an offer by the Plaintiff to sell the refrigerator to him.

The Plaintiff gave evidence as to the conversations at Sogeri and as to subsequent events and conversations.

The Defendant and his wife gave evidence as to these conversations at Sogeri and as to subsequent events and conversations.

Evidence was also given by Kevin Palmer, an Electrical Engineer, and Jack Hart, a Refrigeration Mechanic or Engineer, witnesses called by the Plaintiff, and by the Defendant's son, who was called by the Defendant.

Exhibits "A," "B," and "C" comprise correspondence between the parties.

Exhibit "1" is the compressor and motor, to which

I have referred, and Exhibit "2" consists of letters between the Solicitors of the respective parties, one seeking and the other supplying particulars.

I saw and heard the witnesses give their evidence and since the conclusion of the addresses I have read their evidence, and I have also considered the correspondence. I saw such parts of the compressor and motor as Counsel required me to see for the purpose of understanding the evidence.

Mr. Cory, for the Defendant, devoted a not inconsiderable portion of his very able address to the important aspect of the balance of probabilities and quite rightly pointed out that the onus was upon the Plaintiff.

Mr. Kirke, for the Plaintiff, accepted this challenge and also ably addressed me as to the probabilities, while stressing the importance of the question of the credibility of the oral testimony.

I have considered all these matters and I have given the case my earnest consideration.

I have come to the conclusion that I should find a verdict for the Plaintiff.

I, therefore, pronounce judgment for the Plaintiff for the sum of Three hundred and fifty pounds (£350) with costs upon the appropriate scale and I direct that judgment for the Plaintiff be entered accordingly.

I certify for three refreshers to Counsel.

Exhibit "1" has already been released, by consent, and I order that the other exhibits may be handed out of Court after the time for appeal has expired.

On the 26th October, 1961, during the course of

the hearing, I made an Order granting leave to the Plaintiff to have the Writ and Pleadings amended by inserting the names "Allen Marmaduke" between the names "Selwyn" and "Heath" wherever they appeared.

R. P. Marmaduke

JUDGE.