

SIO WILSON v. SOANE LINO.

(Civil Appeal : Carew C. J. Nuku'alofa, 21st November, 1949).
 Contract of Sale — When does the property pass — No written agreement
 — The Contract Act 1921 Cap. 66 —

The Plaintiff agreed to build a cart for the Defendant. He completed the cart and delivered it to the Defendant. After delivery of the cart the Plaintiff told the Defendant the price was £35. The Defendant paid £11 and failed to pay the balance. The Agreement was not reduced to writing. The Plaintiff sued in Magistrate's Court for £24 and obtained a verdict for £5/15/0 being the balance of amount found by the Magistrate to be due for materials supplied by the Plaintiff. The Magistrate refused to allow anything for labour on ground that there was no written contract.

The Plaintiff appealed.

HELD. That the property in the cart passed to the Defendant on delivery and that the Plaintiff was not entitled to recover anything as there was no contract in writing.

The appeal dismissed and the order for payment of £5/15/0 set aside.

Kioa for Appellant (Plaintiff).

Vete for Respondent (Defendant).

C. A. V.

CAREW C. J. The Magistrate finds that the cart is the property of the Respondent Soane Lino. I agree with this. The Respondent took delivery of the cart, therefore the property in the cart is now his.

The Appellant's only redress now is for the balance of the purchase price. The Appellant did not comply with the provisions of the Contract Act. 1927, Cap. 66 although it appears that he was aware that he should have done so. He says, however, that he trusted the Respondent and so did not bother about having anything in writing.

In the circumstances the contract is unenforceable and the Appellant can not recover the balance of the purchase price.

The Judgment of the Magistrate ordering the payment of £5/15/- and costs totalling £1 must be set aside and judgment entered for the Respondent Soane Lino. The appeal is dismissed.
