

breach of the peace. It is open to question whether he was in a position to come to a decision upon the first of these issues without hearing evidence; and if it should be held that the words alleged were capable of bearing the meaning attributed to them by the Appellant it would seem difficult to support the view that such could not tend to provoke a breach of the peace.

In these circumstances this Appeal has been brought by way of case stated. For the Respondents the objection has been taken that no appeal lies. While it is true that the Commissioner made use of the expression "and I therefore dismiss the charge," it is argued that actually he did nothing of the kind; that what he did was to decide that there was no charge before him into which a preliminary enquiry could be held; and this is not a matter which can be the subject of an appeal under s. 3 of the Appeals Ordinance 1934.

I hold that this objection is well founded.

The case of *Ex parte Lewis*, Q.B.D. page 191, has been cited and goes to show that the provisions of the Appeals Ordinance 1934 are in accordance with English Law in this respect.

It may be proper that I should add that the Appellant is not left without a remedy. It is open to her to bring the matter to the notice of the Attorney-General, who, if in his opinion the course is justified, can follow the procedure adopted in *R. v. Smith* (Case 69 of 1908)¹ and *R. v. Buchanan*² (Case 18 of 1934) and file an information; and, thereupon, under s. 8 of the Indictable Offences Ordinance 1876, certify the Information to a Commissioner and thus cause a preliminary enquiry to be held.

GOVIND *ats.* RAMSARUP.

[Appellate Jurisdiction (Corrie, C.J.) November 11, 1942.]

*Bills of Sale Ordinance, 1879*³—s. 7—*Consideration for Bill of Sale shown as "cash advanced"—no receipt clause—conflict of evidence between parties to Bill as to consideration—whether oral evidence admissible to contradict statement in Bill of Sale—question of damages for wrongful seizure of chattels.*

Appellant was grantor of a Bill of Sale in which the consideration was expressed as "Cash advanced". There was no receipt clause in the Bill of Sale but Respondent, the grantee, gave evidence that the sum of £61 3s. od. had been paid by him to the grantor. Appellant, who was the defendant in an action on the Bill, denied receiving any money on the day of execution of the Bill. Appellant counter-claimed for damages in respect of chattels wrongfully seized and sold by the Respondent.

HELD.—Evidence may be given to contradict the statement in a Bill of Sale as to the consideration for which it was made.

¹ Unreported. See Editorial Note.

² Not reported as to this point. See Editorial Note.

³ Cap. 179.

Cases referred to:—

- (1) *Credit Co. v. Pott* [1880] 6 Q.B.D. 295.
- (1) *Gunpat Chowdaree v. Jagai* [1923] 3 Fiji L.R.
- (3) *Badal v. Bhagoti Prasad* [1941] 3 Fiji L.R.

APPEAL by Defendant against judgment for Plaintiff as to validity of Bill of Sale and against measure of damages on counter-claim.

K. A. Stuart, for Appellant submitted that the Magistrate in reliance on an obiter dictum of Brett L.J. in *Credit Co. v. Pott*. had wrongfully refused to hear evidence to show that the consideration was not truly stated in the Bill. He quoted *Gunpat Chowdaree v. Jagai* in support of his contention.

S. B. Patel for Respondent submitted that the evidence as to consideration was before the Magistrate.

CORRIE, C. J.—It is clear that evidence may be given to contradict the statement in a Bill of Sale as to the consideration for which it was made.

If such were not the rule, the provision of s. 7 of the Bills of Sale Ordinance 1879 (Ordinance 2 of 1879) that the bill shall set forth the consideration for which it was given, "otherwise such bill of sale shall be deemed fraudulent and void", would in practice be reduced to a nullity.

Moreover in *Credit Co. v. Pott*, 6 Q.B.D. p. 295, from which a dictum of Brett, L.J. has been cited in the judgment of the Magistrate's Court, it is clear not only from the judgment of the other judges, but also from that of Brett, L.J. himself, that the Court did have before it and did consider and discuss evidence as to the true nature of the transaction between the parties.

The same course moreover has been followed in this Court in *Badal v. Bhagoti Prasad*.

In the case now under appeal, however, it appears that, notwithstanding the reference to Brett L. J.'s dictum the Magistrate's Court heard and considered evidence as to the true nature of the transaction between parties; and came to the conclusion that the consideration for the bill was truly stated therein.

This Court which has not had an opportunity of hearing the witnesses would require strong reason to induce it to vary a finding made by the Magistrate's Court before which they gave evidence, and there does not appear to be in the evidence any sufficient ground for so doing.

On this point therefore the appeal fails.

On the question of the measure of damages for wrongful seizure, the only issue is as to general damages for the wrongful seizure of the goods improperly sold.

It would appear that this point was not dealt with in the Magistrate's Court. In the circumstances I hold that it will be sufficient compensation to the appellant, if he receives interest at 10% for 2½ months upon the price of the articles wrongfully seized and sold as from the date of seizure: and the judgment of the Magistrate's Court is varied accordingly.