

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

0015
BIGNOLD J.
1952.

COLYER WATSON (NEW GUINEA) LIMITED

V

J. A. T. THURSTON

JUDGMENT

This action came on for hearing at Rabaul Civil sittings on 14 November 1952. Mr Dudley Jones of Counsel for the defendant appeared at the hearing, but there was no appearance by the plaintiff Company.

The proceedings by leave of the Court continued in the absence of any representation of the plaintiff Company, the Court having been informed that shortly before the matter was called the solicitor for the plaintiff Company, being the solicitor on the record as such, verbally advised the solicitor for the defendant that he would not be in attendance at the hearing.

The defendant has admitted in the pleadings the plaintiff's claim for goods sold and delivered to him amounting to the sum of £968.17.6.

The defendant counter-claimed however for the sum of £2,000 for certain engine parts sold and delivered by him to the plaintiff Company.

At the trial of the action the defendant called evidence in substantiation of that counter-claim, supporting his own evidence by that of John Lester Chipper, Edward Lindsay Fowler and George Harold Rodney Marsland.

The evidence adduced by the defendant satisfies me that on 14th October 1948, Pearson, the Manager of Colyer Watson (New Guinea) Limited (which Company was the New Guinea agents for Gray marine engines) inspected 26 cases of Gray marine engine parts, the property of the defendant at the defendant's store on the Rabaul foreshore with a view to purchase, and agreed to buy them from the defendant company for the sum of £2,000, the price asked

by the defendant.

The transaction was in the presence of the witness, Marsland. The sale is confirmed by the evidence of both the witnesses, Chipper and Fowler.

Later on the day of the sale, plaintiff Company's truck took the parts away and they have since been in the plaintiff's possession, and some of those parts have been used by the plaintiff Company in its own engines.

The defendant has never recovered payment for the parts though he has attempted unsuccessfully to obtain payment. There is some evidence that the plaintiff's Manager contended that the parts were merely taken on approval, but on the evidence before this Court this does not appear to be in accord with the facts.

I therefore find in favour of the plaintiff Company in the sum of £968.17.6 admitted on the pleadings, and in favour of the defendant Thurston in the sum of £2,000.

Each judgment will carry an order for costs taxed as between party and party of and incidental to the relative judgment.

E. B. BIGNOLD

J.

/11/52