

TAIMANI SIU v. LEA 'ILOLAHIA.

(Civil Appeal. Higginson J. Nuku'alofa, 8th November, 1950)

Sale of bicycle — Contract for goods to be supplied — Purchase price paid — No written agreement — Contract not enforceable — Cap. 66 Section 5.

It was agreed between the Plaintiff and the Defendant that if the Plaintiff paid the Defendant £20 he would order a bicycle from New Zealand for the plaintiff. The plaintiff paid £20 but the defendant did not supply the bicycle. There was no receipt for the £20 nor any written agreement. The plaintiff sued the defendant in the Magistrate's Court for the £20 and £5 damages. The Magistrate made an order "That the defendant return a bicycle of the value of £20 together with £2 damages and costs and ordered that in default of payment the defendant should be imprisoned for 4 months. The defendant appealed.

HELD. The plaintiff could not recover as there was no written agreement (Section 5 Cap. 66).

Appeal upheld.

Kioa appeared for the appellant (Defendant).

Finau appeared for the Respondent (Plaintiff).

HIGGINSON J. The plaintiff gave evidence that he paid the defendant £20 and that the Defendant contracted to buy and supply a bicycle to the plaintiff.

There was prima facie evidence that the Plaintiff paid the Defendant this money and receipt by the Defendant was never denied.

The question then is whether this contract to supply the bicycle comes within Section 5 of Cap. 66. The Plaintiff has performed his part of the contract by paying the Defendant £20. The £20 was payment for goods to be supplied, i.e. the bicycle. There was no receipt and no written contract.

In my opinion this was a contract for goods to be supplied and the consideration was over £5. Therefore there was no proper contract under Section 5 of Cap. 66. It was a contract within this section and therefore no action is maintainable.

The judgment of the Lower Court is set aside and the case dismissed.

Appeal allowed. £1 appeal fee to be refunded.

Costs for Appellant £1/1/-.

EDITOR'S NOTE: *Quaere* whether His Honour had power to order the appeal fee to be refunded as this was not a criminal appeal, but a Civil Appeal. See Section 73 (2) of Cap. 6.