

INTERESTING POINT DECIDED IN LAW COURT

Failure of Claim for Alleged Wrongful Detention Of Manuscript.

ISSUE INVOLVED.

Submitted By Author With View To Publication And Mislaid Plaintiff Loses.

In the Kingston Court yesterday His Honour Commander Bodilly R. N., Acting Judge, delivered judgment in the suit of H. T. Thomas vs. F. H. Harrison which was concluded last week.

In giving his decision His Honour said this is an action in detinue brought by the plaintiff against the defendant claiming the return of a manuscript on £25 damages for its loss, or £25 damages for its wrongful detention.

The first part of this claim fails because the manuscript was returned to the defendant after the action was brought.

I find the following facts. The plaintiff was the author of this manuscript in question and the defendant, for all the purposes of this case and to the knowledge of the plaintiff, was the manager of a newspaper called the Jamaica Daily Mail.

In April 1928 the plaintiff gave personally to the defendant the manuscript with a view to its reading it, and if suitable publishing it in the newspaper. The defendant did not publish the manuscript or return it to the plaintiff within a reasonable time and the plaintiff wrote numerous letters demanding its return.

The defendant replied that the manuscript was lost and would be returned if and when found. In July 1929, the plaintiff brought the present action.

In November 1929 the manuscript was found and returned to the plaintiff who then said that

HE WOULD DISCONTINUE his action on the payment of six guineas to cover his costs. No reply was made to this offer until the day before trial, when the defendant's solicitor wrote accepting this offer but not enclosing the cheque. The plaintiff had never terminated his offer, but returned the cheque (which was duly received by him during the hearing of the case) on the grounds that the offer lapsed and that the defendant could not then take advantage of it.

At the trial the defendant proved that he had decided not to publish the manuscript, and had placed it in the usual place from which the filing clerk collected rejected manuscripts for filing. The newspaper had changed its offices during the time that the manuscript was lost, but this had no bearing on its loss. By the error of a filing clerk the manuscript had been filed in the wrong file, and could not be found.

I do not find any negligence on the part of the defendant himself who dealt with the manuscript, as he deals with many others in the course of his business as manager.

To these facts I have to apply the law. I must first consider whether the plaintiff's offer to accept six guineas in settlement was at the time it was accepted by the defendant. It was understood that this sum was to reimburse the plaintiff for his expenses; but it was never suggested that it was a precise figure to cover his costs to any precise date. The circumstances surrounding this offer remain the same up to a later date, and the plaintiff recognised the offer remained open because it was admitted that his solicitor frequently asked the defendant's solicitor if he had yet received any instruction about it. The answer was always in the negative. This state of affairs contained up to quite shortly before the trial.

The first notice of acceptance received by the plaintiff was by letter dated 3. 4. 30., that being the

DAY BEFORE THE TRIAL, but the cheque was not received until after the hearing had begun.

It was reasonable to assume that this offer was still open after the plaintiff had collected his evidence and had gone to court with a view to an immediate hearing. This extra

(trouble, expense and worry material)ly changed the conditions on which the offer was contemplated. I find therefore that the offer had lapsed when the plaintiff had begun his preparations for an immediate hearing and that the defendant's acceptance is too late.

I now have to consider the question whether an action lies against the defendant in detinue and the nature of the defence put forward. The defendant was a bailee of the manuscript and the plaintiff alleges that he tortiously withheld it from him.

The defence is that this manuscript was lost without any negligence on the part of the defendant, and this defence I have accepted as proved.

Actions in detinue and conversion are now almost merged in one form of action and the authorities on conversion are to a very large extent, applicable to detinue. The case of Howard vs. Harris (1884) Cababe vs. Ellis Reports 253 is almost exactly parallel to the present case being an action for the loss of a manuscript sent by the defendant for perusal and loss by the defendant.

In that case Williams J. held that there was no case to go to a jury, for the plaintiff

HAD CHOSEN VOLUNTARILY to send to the defendant what the defendant had never asked for, and no duty of any sort or kind was cast upon the defendant with regard to what was so sent.

This case is referred to and commented in the 4th edition of Bowen on Negligence, Volume 2, pages 928-929. It is there suggested that this is not a completely accurate statement of the law and explains the judgment by saying that the ruling of Watkins Williams J. probably was that loss without something to show the circumstances is not evidence to leave to the jury in a case where nothing else than gross negligence would attract liability. Moreover, the action was in trope for the recovery of the manuscript. In this form of action proof of demand and refusal constitutes an apparent conversion and throws upon defendant the burden of showing that the property was lost or stolen. It was probably admitted that the property was lost. The onus in these circumstances on the plaintiff was to prove the facts which constituted the negligence; since mere proof of loss or injury to goods while in the hands of a bailee does not, per se prove negligence in him.

This, with the cases cited in Bowen on negligence, appears to cover the present case.

The further ground for a decision in favour of the defendant is that the manuscript has been returned and the back of which it is a part is not yet finished. Thus the plaintiff has suffered nothing.

I give judgment for the defendant with costs and solicitor's costs.

At the hearing of the case Mr. W. Baggett Grey appeared for the plaintiff, while the defendant was represented by M. C. H. Browne of the firm of Messrs. Manton and Hart.

THE FURTHER GROUND FOR A DECISION IN FAVOUR OF THE DEFENDANT IS THAT THE MANUSCRIPT HAS BEEN RETURNED AND THE BACK OF WHICH IT IS A PART IS NOT YET FINISHED. THUS THE PLAINTIFF HAS SUFFERED NOTHING.

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Results of League Football Games In Great Britain

(By Direct West India Cable Company) LONDON, April 12.—League football matches played today resulted as follows:—English League, First Division: Arsenal 8, Sheffield United 1, Aston Villa 2, Newcastle United 0, Bolton Wanderers-Manchester United not played; Burnley 4, Liverpool 1; Derby County 2, Leicester 2; Everton 2, Grimsby Town 4; Leeds United 4, Blackburn Rovers 2, Manchester City 1, Birmingham 4, Portsmouth 0, Huddersfield Town 1; Sheffield Wednesday 1, Middlesbrough 0; Sunderland 4, Westham United 2.

Second Division:—Bradford City 2, Bury 1; Bristol City 1, Millwall 0; Cardiff City 1, Nottingham Forest 1; Charlton Athletic 0, West Bromwich Albion 1; Hull City 0, Bradford 2; Notts County 1, Southampton 2; Ereton North End 0, Oldham Athletic 3; Reading 3, Tottenham Hotspur 0; Stoke City 3, Barnsley 0; Swansey Town 3, Chelsea 0. Wolverhampton Wanderers 1, Blackpool 2.

Third Division:—(Southern Section.) Bournemouth and Boscombe 2, Bristol Rovers 1; Crystal Palace 4, Torquay United 2, Exeter City 1, Coventry City 1, Fulham 1, Plymouth Argyle 3, Gillingham 3; Newport County 0; Luton Town 2, Brentford 1; Northampton Town 2, Watford 0, Norwich City 6, Merthyr Town 1; Queens Park Rangers 8, Swindon Town 3; Southend United 4, Clapton Orient 1; Walsall 2, Brighton and Hove 0.

Scottish First division:—Airdrieonians 3, Hearts 2, Clyde-Cowdenbeath not played; Dundee vs. Rangers not played; Falkirk 6, Dundee United 2; Hamilton Academicals vs. Queens Park not played; Hibernians 0, Aberdeen 1; Kilmarnock 2, Motherwell 3; Morton 3, Ayr United 4; Patrick Thistle vs. St. Johnstone not played; St. Mirren 0, Celtic 0.

Second Division:—Arbroath 4, Dumbarton 3; Armadale 1, Raith Rovers 1; Boness 2, Stenhouse Muir 0; Dunfermline Athletic vs. Kings Park not played; Fife 5, Forfar 2; East Stirlingshire 2, Leith Athletic 3; Queen of South 1, Alloa 2; St. Bernard's 1, Albion Rovers 1; Third Lanark 1, Brechin City 1.

MR. W. J. LOCKE NOVELIST, SERIOUSLY ILL.

PARIS, March 24.—Mr. W. J. Locke, the novelist, is lying seriously ill in a flat in Paris, and specialists are unable to diagnose his case. Reports that he is much better are unfounded.

Mr. W. J. Locke, the novelist is a West Indian and was born in the island of Trinidad. Some time ago the Gleaner ran a serial story written by him entitled Ancestor Jorico.

FOR SALE No. 2 Foster Lane, Corner of Water Lane, one large dwelling house of 4 apartments, sewerage, bath, etc. \$395. Inspect immediately then apply to— D. C. TAVARES, Auct. Val. Real Est. & Com. Agent, Phone 372. 27 East Queen St.

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FOR SALE NO. 10 JAMES ST. Four separate buildings with 2 rooms each, rental \$5. 10/. Inspect and for further particulars apply to— D. C. TAVARES, Auct. Val. Real Est. & Com. Agent, Phone 372. 27 East Queen St.

FOR PUBLIC SALE The undermentioned Freehold Properties under Powers of Mortgage to the Victoria Mutual Building Society. The Sale will take place at No. 17a Duke Street, Kingston, at 12 noon on Wednesday 14th May 1930. 1. Premises known as No. 3 BERRETT LANE, ROLLINGTON PEN, ST. ANDREW, the property of Mr. W. A. Maitland, with dwelling house and outbuildings thereon. 2. Premises known as No. 18 STUDLEY PARK ROAD, KINGSTON, the property of Mr. A. J. Stephens, with dwelling house and outbuildings thereon. 3. Premises known as No. 8 CROOK STREET, JONES PEN, ST. ANDREW, the property of Mr. J. M. H. Williams, with dwelling house and outbuildings. For further particulars and permission to inspect, apply to— Bourke's Real Estate Agency, 17a Duke Street, Kingston.

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FOR SALE. 1/2 acre of land White Hall Lane St. Andrew and 5 tenant rooms—Price \$160. Inspect then apply to— D. C. TAVARES, Auct. Val. Real Est. & Com. Agent, Phone 372. 27 East Queen St.

FOR SALE. On Spanish Town Road About one mile from the city with 1 shop and six rooms on 1/2 acre of land well fruited; large bearing fruit trees. Price \$260. Inspect then apply to— D. C. TAVARES, Auct. Val. Real Est. & Com. Agent, Phone 372. 27 East Queen St.

FOR SALE NO. 14 GRESHAM ROAD. Woodford Park. House with 3 rooms another of 2 rooms, near South Camp car lines. Price \$345. Inspect then apply to— D. C. TAVARES, Auct. Val. Real Est. & Com. Agent, Phone 372. 27 East Queen St.

FOR SALE NO. 15 CLOVELLY ROAD Centrally located near East Queen Street Car lines. Two Storey Dwelling house of four bedrooms (3 upstairs), drawing and dining rooms, large passage, kitchen, bathroom, Swerage all under one cover—Verandahs, etc. Inspect then apply to— D. C. TAVARES, Auct. Val. Real Est. & Com. Agent, Phone 372. 27 East Queen St.

FOR SALE No. 1 Little Church Street Cheap Going at a Bargain to quick purchaser—House of 5 apartments, 3 tenant rooms. Rental \$5. 10/. Price \$398. Inspect then apply to— D. C. TAVARES, Auct. Val. Real Est. & Com. Agent, Phone 372. 27 East Queen St.

FOR SALE No. 76 North Street Four apartment dwelling house and small shop—Rental \$3. 10/. Price \$375. Inspect then apply to— D. C. TAVARES, Auct. Val. Real Est. & Com. Agent, Phone 372. 27 East Queen St.

FOR SALE No. 4 Brook Street, near Spanish Town Road. About 7 rooms, rental \$4. 10/ per month. Price \$265. Inspect then apply to— D. C. TAVARES, Auct. Val. Real Est. & Com. Agent, Phone 372. 27 East Queen St.

FOR SALE FIVE BUILDING LOTS BOURNEMOUTH. Ocean View Avenue, Crescent Road, and Ostend Road, \$200 and \$150 per lot. Portion of purchase money on a mortgage if required. For particulars apply to— D. C. TAVARES, Auct. Val. Real Est. & Com. Agent, Phone 372. 27 East Queen St.

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