

SHERIFF *v.* LOOGAN and TWO OTHERS

SUPREME COURT (Luke, Ag.J.): January 28th, 1952
(Civil Case No. 367/50)

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[1] **Tort—conversion—damages—measure of damages—value of property at date of conversion:** The value recoverable in an action for conversion is in general the value of the property at the date of the conversion and not its value at an earlier or later date (page 179, lines 1–8).

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[2] **Tort—conversion—definition—intentional act inconsistent with rights of owner:** Dealing with goods in a manner inconsistent with the right of the true owner amounts to a conversion, if the defendant's intention in so doing is to deny the owner's right or to assert a right which is inconsistent with the owner's right (page 178, lines 21–27).

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[3] **Tort—damages—measure of damages—conversion—value of property at date of conversion:** See [1] above.

[4] **Tort—trespass—trespass to land—definition:** Trespass to land consists in the act of entering upon land in the possession of the plaintiff, or remaining upon such land, or placing or throwing any material object upon it, in each case without lawful justification (page 177, lines 29–33).

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The plaintiff brought an action against the defendant to recover damages for trespass, ejectment, detinue and conversion.

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The plaintiff, who was a tenant of the first and second defendants, was ejected from the premises in his absence, and his goods were removed and stored in the premises of the first and third defendants. The plaintiff recovered some but not all of his goods; those that were in the possession of the third defendant the latter refused to give up. The plaintiff instituted the present proceedings against the defendants, who denied all claims.

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Cases referred to:

(1) *Caxton Publishing Co. v. Sutherland Publishing Co.*, [1939] A.C. 178; [1938] 4 All E.R. 389.

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(2) *Lancashire & Yorkshire Ry. Co. v. MacNicoll*, [1918–19] All E.R. Rep. 537; (1919), 88 L.J.K.B. 601, *dictum* of Atkin, J. considered.

(3) *Swire v. Leach* (1865), 18 C.B.N.S. 479; 144 E.R. 531.

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Massally for the plaintiff;
Margai and *O.I.E. During* for the defendants.

LUKE, Ag.J.:

The plaintiff's action, which consists of multiple claims, involves trespass, ejectment, detinue and conversion.

The facts, so far as disclosed by the evidence, briefly are that the plaintiff, who was a tenant of the first and second defendants paying rent of £1 a month, was ejected during his absence, and his goods were removed and stored in a room in the first defendant's house. His wife, whom he had left in charge of his premises, sent someone to call him, and on his arrival he met his wife living in another place. When he went to enquire from the first defendant whether he had ejected him during his absence, he admitted doing so; and on enquiring about his goods and other effects which were left in his premises when he went away, the first defendant informed him that they were stored in a room in his house. They both went to the first defendant's house, where his goods were delivered to him minus the articles which were enumerated under the heading "Particulars of goods missing and taken possession of," totalling the sum of £124. 9s. 6d. Apart from these articles, he also had in the premises when he left on this short visit one iron bed with mattress, two wooden beds and one cash bag, placed between bed and mattress, containing £400. On enquiring from the first defendant about his beds, the first defendant told him they were left in the house and he could call for them there, where they would be delivered to him by the then tenant, who was the third defendant. The plaintiff called on the third defendant as instructed, but the latter refused to deliver these beds. The plaintiff informed the third defendant that he had some valuable thing sandwiched between his bed and mattress, and as a matter of fact informed him that the sum of £400 was the valuable thing, and that he should allow him to go and get it. Even though he had disclosed that fact to the third defendant, the latter still refused to allow him to go and get the beds and this money.

The defence is a denial that the plaintiff was a tenant of the first and second defendants, but that of Paramount Chief Francis Pehyimbo; and that the plaintiff was in arrears with his rent and therefore he was given notice to quit. On the expiration of the notice, he asked for an extension which was granted, and before the expiration of the extension he agreed with the P.C. to hand over the premises to a Syrian tenant Nicol George Anthony (*alias* Bingy Banger). On the day in question it was the plaintiff's wife, Boi Sally, who voluntarily handed over these premises to the first defendant

when Anthony arrived to take possession. The third defendant stated that these beds and mattresses were not detained by him but they were left with him at the plaintiff's request as the plaintiff had no conveyance to remove them and said he would call for them later. The plaintiff at no time asked him for them and he refused to give them up.

The defences on the statement of defence which were delivered and filed by all three defendants are totally inconsistent with their evidence in the witness-box and those of the witnesses called in support.

The first and second defendants denied in para. 3 of their defence ever entering the plaintiff's house, removing and detaining his articles or goods as alleged, yet in their evidence, as well as that of the witnesses called, they deposed that it was when they went to this house on the arrival of Anthony to take possession that the plaintiff's wife, after telling them that her husband was away from home, informed them that before he (the plaintiff) left he gave her instructions that if the new tenant came to take possession she was to remove his things and give him possession. The first defendant in his evidence went to the extent of stating that when the wife told him that, he was unwilling to accept it as he knew the third defendant was a very troublesome person; but as she insisted he agreed. Then, after the plaintiff's wife had packed the goods, she had them removed to his (the first defendant's) house for storage. This evidence, to say the least, is a fabrication for it was not borne out either by the preceding or succeeding events. The second defendant has not played a notorious part in this affair, save that as a co-owner or landlord he not only ratified all that the first defendant did but also associated himself at some stages of this affair. In the course of the first defendant's evidence, as well as in the cross-examination of the plaintiff's witnesses, it was stated that the house in question belonged to Paramount Chief F. Pehyimbo, and that it was the Paramount Chief who rented this house to the plaintiff. When the plaintiff fell into arrears with his rent, notice was given him terminating his tenancy. Paramount Chief Pehyimbo did not give evidence and the notice was not produced at the trial to support these allegations, even though, in my opinion, if these things had been done they would have affected the whole action, which as I have said consisted of multiple claims.

The third defendant went into the box and completely revised his defence. Instead of a total denial of any knowledge of the

detention of the plaintiff's beds and mattresses with whatever contents there may have been in any of them, as pleaded in his defence, he stated that these beds and mattresses were, at the request of the plaintiff when he called on him on October 21st, 1950, given to him to be held over until the plaintiff called again, and that since October 23rd, 1950 they had been stored there. This story is quite inconsistent with the story of the plaintiff and his witnesses. Even as late as the trial he did not offer to return them. The plaintiff's witnesses alleged that not only did the plaintiff call for his goods, which were refused him, but the third defendant was definitely hostile and rude to him. One of them went so far as to say, when the plaintiff called him, that the person who had accompanied him to receive these articles from the third defendant told him that not only should he call them but he should also take down their names, and if he had no pencil and paper to do that he could supply, and in fact did supply, him with them. How can this attitude then be reconciled with the story in the witness-box, especially as this story has not been borne out by his pleadings? The only answer which can be given is that this was an afterthought by the third defendant when he realised all that was involved when the action was being tried in court.

These are the facts and I now turn my attention to the law which these facts support. First of all, the claim of trespass has been proved because the evidence of the plaintiff and the defendants has clearly shown that on the day in question the plaintiff was in possession of these premises, and during his absence the first and second defendants went into it and turned out his wife and those who were in possession and seized his goods, furniture and money.

Salmond on Torts, 10th ed., at 199 (1945), defines trespass to land as consisting in the act of—“(a) entering upon land in the possession of the plaintiff, or (b) remaining upon such land, or (c) placing or throwing any material object on it—in each case without lawful justification.” In this case evidence has been given that not only did the first and second defendants enter the land, but they also gave it to the third defendant, who is now on the land.

Having dealt with the question of the trespass, I now turn to the question of the removal and detention of the goods, some of which the plaintiff alleges were missing, and which he has exhibited under particulars of goods missing etc. The first defendant's solicitor has stated that these are fictitious claims which the plaintiff has bolstered up, but after examining very carefully the evidence

which has been given this statement has not been supported. All three defendants' conduct throughout these proceedings has been nothing short of high-handed, and if they now find themselves within the clutches of the law they have no one to blame but themselves. There is abundant evidence given by the plaintiff and his witnesses that as soon as the plaintiff was handed his goods by the first defendant, when he arrived after his wife had sent someone to call him, he told the first defendant, when the latter delivered the goods which he had removed and stored in a room in his house, that those were not all of his goods and that goods to the value of £100 were missing. These goods he itemised in his statement of claim and they total £124. 9s. 6d. The plaintiff was not cross-examined on this value. He then asked for his beds and mattress, and he was directed to go to the house where he would find them and to take them from there. He went to the house but the third defendant refused to deliver them.

By these acts of the three defendants, have they committed trover and conversion? The answer is in the affirmative, for not only was there a demand and a refusal but these articles have up to the present not been delivered.

Conversion was defined by Atkin, J. in the case of *Lancashire & Yorkshire Ry. Co. v. MacNicol* (2) ([1918-19] All E.R. Rep. at 540-541; 88 L.J.K.B. at 605) as "dealing with goods in a manner inconsistent with the right of the true owner . . . providing it is also established that there is an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right."

There has been given in this case ample evidence that the plaintiff demanded his goods and the defendants refused and neglected to comply with the demands for the return of those articles.

The only matter which remains to be dealt with is the measure of damages, if any, which the plaintiff, in a claim such as this, is entitled to. First of all, I shall deal with the trespass, and in that regard I shall say that the evidence has shown that only the first and second defendants trespassed on the plaintiff's premises at the material time. I shall now divide the goods which have been converted into two categories: first, those goods in the shop which were removed by the first and second defendants, and stored in the first defendant's room; and secondly, those goods (beds, mattress and contents) which were left in the premises occupied by the third defendant. In determining the damages appropriate Salmond, *op.*

cit., at 306, says: "Damages are merely a substitute for such possession, and the damages must therefore be the equivalent of the chattel, and amount to the full value of it. In other words, the plaintiff in trover is entitled either to the property or to its pecuniary equivalent." See the case of *Swire v. Leach* (3).

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Salmond also states at 309: "The value recoverable in an action for conversion is in general the value of the property at the date of the conversion, and not its value at any earlier or later date." See the judgment of Lord Porter in *Caxton Publishing Co. v. Sutherland Publishing Co.* (1).

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Having ascertained by the authorities the manner in which the damages in these different claims should be assessed, I award the plaintiff on the claim of trespass £20 against the first and second defendants. As regards the trover and conversion claims, the damages are assessed as follows: £124. 9s. 6d. against the first and second defendants and £438 against the third defendant. Costs are to be taxed against all three defendants.

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Judgment for the plaintiff.

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IN RE HAMILTON and IN RE FREETOWN IMPROVEMENT
ORDINANCE (CAP. 89)

SUPREME COURT (Luke, Ag.J.): February 4th, 1952
(Civil Case No. 382/51)

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[1] **Administrative Law—public officers—authority of public officer—citizen protected if misled by public officer into believing acting legally—protection extends to criminal offence of which knowledge necessary element:** While the illegality of an act done in the face of a statutory prohibition is not affected by the fact that it has been induced by a misleading assumption of authority by a Government officer, such inducement will be a material factor in criminal proceedings against the actor resulting from reliance on the misleading assumption of authority if a necessary element of the offence is knowledge, and in any case it will have a bearing on the sentence to be imposed (page 183, line 40—page 184, line 11; page 187, lines 37-41).

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[2] **Criminal Law—mistake or ignorance—mistake of law—citizen misled by Government officer into believing acting legally—material to prosecution of offence requiring knowledge and to sentence:** See [1] above.

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[3] **Land Use Planning—building regulations—approval of plans—failure**