

BOVILL,  
C.J.  
&  
SMITH, J.  
1890.  
July 19.

[BOVILL, C.J. AND SMITH, J.]

THE CHIEF COLLECTOR OF  
CUSTOMS

*Plaintiff,*

*v.*

ALI HUSSEIN

*Defendant.*

PRACTICE—PENALTY—CIVIL ACTION—CRIMINAL PROCEEDING—  
JURISDICTION OF DISTRICT COURT—CUSTOMS AND EXCISE  
REGULATIONS ORDINANCE, 1879, SECTION 46.

Section 46 of the Customs and Excise Regulations Ordinance, 1879, provides that all duties, penalties and forfeitures . . . imposed by this Ordinance or any law relating to Customs or Excise, and the liability to forfeiture of any goods seized under the authority thereof, may be sued for, prosecuted or recovered by action or information in the name of the Chief Collector of Customs, etc.

HELD (affirming the decision of the Court below): That the proceedings to be taken to recover penalties and forfeitures under this section must be criminal proceedings.

APPEAL from the District Court of Famagusta.

The action was brought to recover penalties under Section 12 of the Customs and Excise Ordinance of 1879 for not rendering an account of goods exported and for a declaration that the goods were forfeited under Section 22 of the Customs and Excise Regulations Ordinance, 1879.

The judgment of the District Court was to the following effect :

The plaintiff's claim, as appearing in the writ of summons, is as follows :—

Penalties and forfeiture of goods for infringement of Customs Ordinances, I. of 1879, Clause 12, and XXIV. of 1879, Clause 22. This is, to say the least, a most bald statement of claim, but no objection has been taken, and it is, therefore, to be presumed that the defendant has in no way been prejudiced by it.

The defendant, on the case being called, raised two preliminary objections : (i.) that this Court has no jurisdiction, the recovery of penalties under the Customs Ordinance being a criminal not a civil proceeding, and (ii.) that the writ was bad because the return was less than 15 days from the date of the writ.

By Section 46 of Customs and Excise Regulations Ordinance, 1879, " all duties penalties and forfeitures may be sued for, prosecuted and recovered by action or information before any Court of competent jurisdiction." " Court of competent jurisdiction " is defined by Section 3 of Ordinance III. of 1879, amended by Ordinance X. of 1880, to

The facts, as admitted, were, that on the 23rd of June, 1890, the plaintiff purchased from the defendant two mares and paid £4 in part payment of the price. He took the mares home, and then discovered that one was broken-winded. The next day he returned the mares to the defendant, who refused to accept them.

This action was then brought.

The defendant called a witness to prove that the plaintiff saw the horses at work on a thrashing-floor before he agreed to purchase them.

The District Court held, that as he had seen the horses at work and was apparently satisfied, he must be bound by his contract. There was no evidence either that the vendor stated that he would not warrant them free from all defects, or that the purchaser stated that he would accept them with all defects.

Judgment for the defendant.

The plaintiff appealed.

*The Queen's Advocate*, for the appellant, contended that in the absence of any stipulation to the contrary, the vendor is bound to deliver the thing sold free from all defects, unless the purchaser has agreed to accept it with all defects.

*Diran Augustin* for the respondent.

*Judgment*: We are of opinion that the judgment of the District Court cannot be upheld.

Under Article 336 of the Mejjellé, on a sale of specific chattels the thing sold must be free from all defects unless (1) the vendor at the time of the sale declares that he will not warrant the goods to be free from all defects (Article 342), or (2), unless the purchaser agrees to accept the goods with all defects (Article 343). If subsequently to the sale the purchaser discovers a defect in the goods which existed prior to the sale, he has the right to rescind the contract (Article 337).

In the present case the defendant sold to the plaintiff two mares, nothing being said at the time of the sale as to their state or condition; the defendant did not say that he would warrant them to be free from defect, and the plaintiff did not say that he would accept them with all defects. On the evening of the day on which he bought them, the plaintiff discovered that one of the mares was broken-winded, and he thereupon returned the mares to the defendant who refused to receive them. The plaintiff thereupon brought this action to rescind the contract and

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MUSTAPHA  
MEHMET  
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NICOLA  
YANNI  
TZINGO.

BOVILL, C.J. & SMITH, J. to recover back from the defendant the £4 which he had paid in part payment for the mares.

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We are of opinion that this was a case of simple sale, and that there was an implied warranty on the part of the defendant that the mares were free from defect. A defect is defined, in Article 138, as anything which, in the opinion of experts, diminishes the value of the thing sold. The fact that one of the mares was broken-winded shews that there was such a defect, and we therefore hold that the plaintiff has established his right to have this contract rescinded and is entitled to recover back the £4.

*Appeal allowed.*

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