1965
April 2,
May 18
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IOANNIS
PATSALIDES
v.
KARABET
AFSHARIAN

[VASSILIADES, TRIANTAFYLLIDES, JOSEPHIDES, JJ.]

IOANNIS PATSALIDES,

Appellant-Defendant,

v.

KARABET AFSHARIAN,

Respondent-Plaintiff.

(*Civil Appeal No. 4497*).

Bills of Exchange—Cheque—Bills of Exchange Law, Cap. 262, *sections* 29, 30 *and* 90—*Cheque issued on illegal consideration—Whether respondent knew the illegality tainting the issue of the cheque or was a holder in due course in the sense of section* 29 *of Cap.* 262 (supra).

Practice—Appeal—Findings of fact by trial Courts—Finding of trial Court that respondent was the holder for value paid in due course and in good faith not warranted by the evidence, considered as a whole—Finding reversed—Use of powers of the Supreme Court conferred upon it under section 25 (3) *of the Courts of Justice Law,* 1960—*Observations in connection with the position of trial Court findings in proceedings on appeal.*

Appellant-defendant appeals against the judgment given by the District Court of Famagusta in civil action No. 39/62, by which he was adjudged to pay to the respondent-plaintiff the sum of £400 due by virtue of a cheque drawn by the appellant on the 20th December, 1961. Appellant was also ordered to pay the costs of the proceedings.

In the early hours of the 20th December, 1961, the appellant drew a cheque for £400, which is the subject-matter of this action, to the order of himself and, having endorsed it, he handed it to a certain Constantinos Lazarides, a business man settled in London and who was on a visit to Cyprus, in payment of gambling losses of the appellant ; the cheque was thus issued for an illegal consideration. Later on the same day, the appellant instructed his Bankers, the National Bank of Greece, Famagusta to stop payment of the cheque. The said Lazarides then arrived at the premises and tried to cash the cheque but he was accordingly refused payment.

On the 21st December, 1961, a Saturday, Lazarides, while at Larnaca, called, at about 11 a.m.–12 noon, at the shop of the respondent, a shirt-maker, with his workshop at Larnaca,

who was an acquaintance of his but not a business associate, and asked him to cash the cheque. The respondent cashed the cheque, paying out a sum of £400 which he kept at the time in his safe.

On the 23rd December, 1961, respondent presented the cheque to the Chartered Bank, Larnaca, for collection and on the 29th December, 1961, he received a notice from the said Bank returning to him the cheque unpaid and referring him to drawer.

This action was filed on the 5th January, 1962, and at the time the said Lazarides was still in Cyprus and about to leave for London. He has not been joined as a defendant in these proceedings and the reason given by respondent for failing to take such a course is that the respondent contacted Lazarides after the cheque had been returned unpaid, and he received assurances that if the appellant would not pay then Lazarides would pay himself.

It has been the version of respondent that he did not know that the cheque had been given to Lazarides for money lost by the appellant when gambling ; on the contrary, he has alleged that he had inquired from Lazarides as to the origin of the cheque and he had been assured that the latter came to possess the cheque by having sold a number of rings to a merchant at Famagusta. Respondent denied a suggestion that on the night of the 20th December Lazarides had said in his presence at a club in Larnaca, that he had got the cheque for money won at gambling.

On the basis of the above facts the main issue has turned out to be whether or not respondent is a holder in due course in the sense of section 29 of the Bills of Exchange Law, Cap. 262.

Held, (*I*) *per* TRIANTAFYLLIDES, J.: *on whether or not respondent is a holder in due course in the sense of section* 29 *of the Bills of Exchange Law, Cap.* 262.

(1) For a person to be a holder in due course he must be a holder who has taken a bill, complete and regular on the face of it, (*a*) before it was overdue, and without notice that it has been previously dishonoured, if such is the fact, and (*b*) in good faith and for value and without notice at the time, when the bill was negotiated to him, of any defect in the title of a person, who negotiates a bill, illegal consideration is expressly enumerated in sub-section (2) of section 29.

(2) By section 30 (2) of the same Law, every holder of a bill is *prima facie* deemed to be a holder in due course but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with, *inter alia*, illegality the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged illegality, value has in good faith been given for the bill.

(3) By section 90 of the same Law, a thing is deemed to be done in good faith, within the meaning of the Law, where it is in fact done honestly, whether it is done negligently or not.

(4) There can be no doubt in this case that—in accordance with section 30 (2) of Cap. 262—once it had been established that the issue of the cheque in question was affected by illegality, the burden of proof has shifted on the respondent, who was thus expected, in order to be entitled to succeed in the action, to prove that, subsequent to the said illegality, he has given value in good faith for the cheque.

(5) That he has given value for the cheque it is not disputed. What is in dispute is his good faith, in the sense that he is alleged to have known of the illegality tainting the issue of the cheque. On this issue the trial Court has found in favour of the respondent.

(6) Counsel for appellant has invited this Court to say that the conclusion of the learned trial Judge on this point is not warranted by the totality of the circumstances of this case ; Counsel for respondent has submitted that on this issue the trial Court has made a finding of fact with which this Court is not properly entitled to interfere.

(7) The relevant conclusion of the trial Court may have been based to a certain extent, on the impression of reliability made by respondent when giving evidence before it, but it is a conclusion which, because of its nature, should and must have been primarily based on inferences drawn from the totality of the proved circumstances of this case. It is, in other words, really an inference of fact and not a finding of fact.

(8) It is not, therefore, necessary to go in this case into the authorities laying down the powers of this Court in dealing with findings of fact made by trial Courts. It may be mentioned, however, that in a recent judgment in *Thomaides and Co. Ltd.* v. *Lefkaritis Brothers* (reported in this vol. at p. 20 *ante*) the whole matter has been gone into and the relevant authorities have been referred to.

(9) In this case, as already stated, we are not concerned with a finding of fact, based on credibility, but with an inference of fact. It is well settled—and no authority need be cited—that an appellate court is in as good a position as a trial Court to draw inferences of fact from the facts as found. So, I feel that we are in an equally good position to examine the correctness of the inference of the trial Court regarding the good faith of respondent.

(II) as to the correctness of the inference of the trial Court regarding the good faith of respondent :

(1) Having given much thought to this matter, I have come to the conclusion that learned counsel for appellant is right in his contention that such inference should not have been drawn in the light of the totality of the proved circumstances of this case.

(2) For all these reasons, I have come to the conclusion that the proper finding on the issue of good faith is that respondent has failed to discharge the burden which had shifted on to him, and that, therefore, he was not entitled to succeed in this action. In the circumstances, there shall be an order reversing the judgment of the Court below, and dismissing the action.

(III) as to costs :

As regards costs, taking into account the nature of the transaction which led to the issue of the cheque, I feel that each party should bear its own costs in the whole of the proceedings, both in the proceedings in the Court below and on appeal.

(IV) per VASSILIADES, J.:

(1) *As regards the position of trial Court findings in proceedings on appeal :*

(*a*) After the establishment of the Republic, the matter was first discussed—as far as the reported cases go—in *Philippos Charalambous* v. *Sotiris Demetriou* decided in December, 1960, and reported in 1961, C.L.R. p. 14. That was the position prior to the publication of the Courts of Justice Law, 1960 (No. 14 of 1960) published on 17th December, 1960, enacted apparently in pursuance of Constitutional provisions regarding the administration of justice and the establishment of the new Courts in the Republic (such as Articles 30 ; 155 (1); 158 ; 190, etc.).

(*b*) The position regarding appeals in the new Law is mainly found in section 25 of the statute ; and was first discussed in *Stelios Michael Simadhiakos* v. *The Police* decided in April, 1961 (1961, C.L.R. p. 64). The line of approach adopted in that case, was followed in a number of subsequent appeals, both civil and criminal, ever since. I need not here refer to them, excepting for two very recent ones which cover the question raised herein ; *Thomaides & Co. Ltd.* v. *Lefkaritis Brothers* (reported in this vol. at p. 20 *ante*) just referred to by Mr. Justice Triantafyllides ; and *Panayiotis Nicola Hiratis* v. *Thomas Marcou* (Civil Appeal 4505) decided in this Court on the 6th April, 1965 (unreported).

(*c*) The position is clearly settled. At the hearing of an appeal this Court exercising its powers under section 25 (3) of the Courts of Justice Law, 1960, considers the findings of the trial Court in the light of argument or criticism on behalf of the parties, and in view of the whole evidence and other material on record, comes to its own decision on the question whether the party attacking any of the findings of the trial Court has satisfied this Court that " the reasoning behind such finding is unsatisfactory or that the finding is not warranted by the evidence considered as a whole ".

(2) *On whether or not the respondent is a holder in due course in the sense of section* 29 *of the Bills of Exchange Law, Cap.* 262.

Coming now to the present case, the appellant has shown to the satisfaction of this Court (same as has happened in several other cases before now) that for the reasons stated in the judgment just delivered by Mr. Justice Triantafyllides, the finding of the trial Court on the facts pertaining to the issue whether the respondent was the holder of this bill for value paid in due course and in good faith, was not warranted by the evidence, considered as a whole. Such finding must, therefore, be set aside and the appellant must succeed. Respondent's claim on the bill in question, must be dismissed. In the circumstances there will be no order for costs here or in the District Court.

(*V*) *per* JOSEPHIDES, J.:

I agree that, in the circumstances of this case, the finding of the trial Court that the respondent has discharged the burden of proof cast on him, to the effect that, subsequent to the illegality, value has in good faith been given for the cheque

(under the provisions of section 30 (2) of the Bills of Exchange Law, Cap. 262), is not warranted by the evidence, and the appeal should, therefore, be allowed.

(VI) as regards the position of trial Court findings in proceedings on appeal :

(*a*) With regard to the powers of this Court on appeal from the findings of trial Courts, in addition to what has already been stated, I would like to quote the following extract from the judgment in *Adem* v. *Mevlid* (1963) 2 C.L.R. 3.

" What was said by this Court in the case of *Economides* v. *Zodhiatis* 1961 C.L.R. 306, is, I think, to the point :

' Undoubtedly a Court of Appeal has the power to set aside the findings of fact of a trial Court where the trial Judge has failed to take into account circumstances material to an estimate of the evidence, or where he has believed testimony which is inconsistent with itself, or with indisputable fact. And since the enactment of the Courts of Justice Law, 1960, under section 25 (3) this Court is not bound by any determinations on questions of fact made by the trial Court and has power to re-hear any witness already heard by the trial Court, if the circumstances of the case justify such a course. But this provision has to be applied in the light of the general principle that a Court of Appeal ought not to take the responsibility of reversing the findings of fact by the trial Court merely on the result of their own comparisons and criticism of the witnesses, and of their own view of the probabilities of the case '.

A distinction should, however, be made between the findings of primary facts and the conclusions drawn from those facts by the trial Court. The Court of Appeal is prepared to form an independent opinion upon the proper conclusion of fact to be drawn from a finding of primary facts."

The Order : In the result the appeal is allowed, the judgment of the Court below set aside and the plaintiff's claim dismissed. No order for costs here or in the District Court.

Appeal allowed. Judgment of the Court below set aside ; plaintiff's claim dismissed.

Cases referrred to :

Thomaides and Co. Ltd. v. *Lefkaritis Brothers* (reported in this vol. at p. 20 *ante*) ;

Philippos Charalambous v. *Sotiris Demetriou*, decided in December, 1960, and reported in 1961, C.L.R., p. 14 ;

Stelios Michael Simadhiakos v. *The Police*, decided in April, 1961 (1961, C.L.R., p. 64) ;

Panayiotis Nicola Hiratis v. *Thomas Marcou* (Civil Appeal 4505) decided in this Court on the 6th April, 1965 (unreported) ;

Adem v. *Mevlid* (1963) 2 C.L.R. 3.

Appeal.

Appeal against the judgment of the District Court of Famagusta (Kourris, D.J.) dated the 30th June, 1964 (Action No. 28/62) whereby the defendant was adjudged to pay the sum of £400 to plaintiff by virtue of a cheque drawn by defendant.

X. Clerides, for the appellant.

A. Antoniades, for the respondent.

Cur. adv. vult.

The following judgments were delivered by :

TRIANTAFYLLIDES, J.: In this appeal the appellant-defendant appeals against the judgment given by the District Court of Famagusta in civil action No. 38/62, by which he was adjudged to pay to the respondent-plaintiff the sum of £400 due by virtue of a cheque drawn by the appellant on the 20th December, 1961. Appellant was also ordered to pay the costs of the proceedings.

Most of the salient facts are common ground in this case.

As found by the learned trial Judge—who certainly appears to have gone very carefully into this case—on the night of the 19th December, 1961, the appellant lost in gambling a considerable amount of money to a certain Constantinos Lazarides. So, in the early hours of the 20th December, 1961, he drew a cheque for £400, which is the subject-matter of this action, to the order of himself and, having endorsed it, he handed it to the said Lazarides. The cheque was thus issued for an illegal consideration, *i.e.* in payment of gambling losses of the appellant.

On the 20th December, 1961, *i.e.* later on the same day, the appellant proceeded to the premises of the National Bank of Greece, Famagusta—on which Bank the cheque had been drawn—and instructed such Bank to stop payment of the cheque. The said Lazarides then arrived at the premises and tried to cash the cheque but he was accordingly refused payment, in the presence of the appellant.

On the 21st December, 1961, a Saturday, Lazarides, while at Larnaca, called, at about 11 a.m.–12 noon, at the shop of the respondent, who was an acquaintance of his but not a business associate, and asked him to cash the cheque. The respondent cashed the cheque, paying out a sum of £400 which he kept at the time in his safe.

The appellant is an importer having his place of business in Famagusta. The respondent is a shirt-maker, with his workshop at Larnaca, and the aforesaid Lazarides is a business-man who has settled in London and who was on a visit to Cyprus.

On the 23rd December, 1961, respondent presented the cheque to the Chartered Bank, Larnaca, for collection and on the 29th December, 1961, he received a notice from the said Bank returning to him the cheque unpaid and referring him to drawer.

This action was filed on the 5th January, 1962, and at the time the said Lazarides was still in Cyprus and about to leave for London. He has not been joined as a defendant in these proceedings and the reason given by respondent for failing to take such a course is that the respondent contacted Lazarides, after the cheque had been returned unpaid, and he received assurances that if the appellant would not pay then Lazarides would pay himself.

It has been the version of respondent that he did not know that the cheque had been given to Lazarides for money lost by the appellant when gambling ; on the contrary, he has alleged that he had inquired from Lazarides as to the origin of the cheque and he had been assured that the latter came to possess the cheque by having sold a number of rings to a merchant at Famagusta. Respondent denied a suggestion that on the night of the 20th December, Lazarides had said in his presence at a club in Larnaca, that he had got the cheque for money won at gambling.

Concerning this incident at the club, at Larnaca, the appellant called as a witness a certain Miltiadou, a taxi driver, who gave evidence to substantiate it. The evidence of this

witness was rejected by the trial Court as unreliable and I see no reason at all why we should interfere with the decision of the trial Court on this point.

On the basis of the above facts the main issue has turned out to be whether or not respondent is a holder in due course in the sense of section 29 of the Bills of Exchange Law, Cap. 262.

For a person to be a holder in due course he must be a a holder who has taken a bill, complete and regular on the face of it, (*a*) before it was overdue, and without notice that it has been previously dishonoured, if such is the fact, and (*b*) in good faith and for value and without notice at the time, when the bill was negotiated to him, of any defect in the title of the person who negotiated it. Among the defects of title of a person, who negotiates a bill, illegal consideration is expressly enumerated in sub-section (2) of section 29.

By section 30 (2) of the same Law, every holder of a bill is *prima facie* deemed to be a holder in due course but if in an action on a bill it is admitted or proved that the acceptance, issue, or subsequent negotiation of the bill is affected with, *inter alia*, illegality the burden of proof is shifted, unless and until the holder proves that, subsequent to the alleged illegality, value has in good faith been given for the bill.

By section 90 of the same Law, a thing is deemed to be done in good faith, within the meaning of the Law, where it is in fact done honestly, whether it is done negligently or not.

The learned trial Judge, having directed himself correctly on the law, as laid down in sections 29 and 30 of Cap. 262, proceeded to state his conclusion as follows (at p. 16) :

> "On the evidence before me, it appears that the said cheque was given for an illegal consideration, and I am further satisfied that the plaintiff took the cheque in good faith and for value and that at the time the cheque was given to him he did not know that the cheque was endorsed to Lazarides for an illegal consideration. And I have reached the conclusion that the plaintiff is a holder in due course."

Earlier on in his judgment, the learned Judge had found the respondent-plaintiff to be a reliable witness.

There can be no doubt in this case that—in accordance with section 30(2) of Cap. 262—once it had been established

that the issue of the cheque in question was affected by illegality, the burden of proof has shifted on the respondent, who was thus expected, in order to be entitled to succeed in the action, to prove that, subsequent to the said illegality, he has given value in good faith for the cheque.

That he has given value for the cheque it is not disputed. What is in dispute is his good faith, in the sense that he is alleged to have known of the illegality tainting the issue of the cheque. On this issue the trial Court has found in favour of the respondent.

Counsel for appellant has invited this Court to say that the conclusion of the learned trial Judge on this point is not warranted by the totality of the circumstances of this case ; Counsel for respondent has submitted that on this issue the trial Court has made a finding of fact with which this Court is not properly entitled to interfere.

The relevant conclusion of the trial Court may have been based to a certain extent, on the impression of reliability made by respondent when giving evidence before it, but it is a conclusion which, because of its nature, should and must have been primarily based on inferences drawn from the totality of the proved circumstances of this case. It is, in other words, really an inference of fact and not a finding of fact.

It is not, therefore, necessary to go in this case into the authorities laying down the powers of this Court in dealing with findings of fact made by trial Courts. It may be mentioned, however, that in a recent judgment in *Thomaides and Co. Ltd.* v. *Lefkaritis Bros.* (reported in this vol. at p.20 *ante*) the whole matter has been gone into and the relevant authorities have been referred to. In this case, as already stated, we are not concerned with a finding of fact, based on credibility, but with an inference of fact. It is well settled—and no authority need be cited—that an appellate Court is in as good a position as a trial Court to drawn inferences of fact from the facts as found. So, I feel that we are in an equally good position to examine the correctness of the inference of the trial Court regarding the good faith of respondent.

Having given much thought to this matter, I have come to the conclusion that learned counsel for appellant is right in his contention that such inference should not have been drawn in the light of the totality of the proved circumstances of this case.

In taking such a view I have been particularly impressed by the following considerations :

Though the cheque in question is for a very large amount, *viz.* £400, nevertheless respondent chose to cash it, and moreover he had done so, not in the course of any business transaction but on the strength of a mere acquaintance. Also he chose to do so at a time (11 a.m.–12 noon) when the banks were still open and he could have asked Lazarides either to cash it himself at a bank or at least, he, respondent, could have telephoned and ascertained whether this cheque would be honoured ; appellant was unknown to respondent and he, therefore, could not have taken for granted his credit for an amount as large as £400 in order merely to facilitate an acquaintance.

The cheque had been issued on the previous day, the 20th December, and, therefore, ordinarily Lazarides would have had time to go to a bank himself and cash it ; it was not a case where the cheque had just been issued and Lazarides, his then holder, was in immediate need of money. Yet respondent seems to have chosen to act as a clearing banker himself though this, clearly, was not part of his usual trade as a shirt-maker.

All the above considerations, far from pointing to the innocence of respondent, militate strongly in favour of the inference that respondent, who cannot be taken to be either naive or not possessing ordinary intelligence, acted as he did because he knew that there were difficulties to the normal cashing of the cheque by Lazarides and it was only through cashing it himself, a stranger to the illegality, that the amount of £400 could at all be collected ; and that he agreed to help Lazarides in this respect.

It is very significant indeed that though Lazarides was still in Cyprus, in January, 1962, when this action was instituted, nevertheless respondent has failed to join him as a co-defendant. It is very strange, to say the least, that an innocent victim of this transaction, as respondent alleges that he is, has not proceeded against Lazarides, who is the person who made him, by false statements, to part with a sum of £400 and has chosen to chase only after appellant who has in no way come into any contact with him at all in this transaction.

For all these reasons, I have come to the conclusion that the proper finding on the issue of good faith is that respondent has failed to discharge the burden which had shifted

on to him, and that, therefore, he was not entitled to succeed in this action. In the circumstances, there shall be an order reversing the judgment of the Court below, and dismissing the action.

As regards costs, taking into account the nature of the transaction which led to the issue of the cheque, I feel that each party should bear its own costs in the whole of the proceedings, both in the proceedings, in the Court below and on appeal.

VASSILIADES, J.: I had the advantage of reading the judgment just delivered by Mr. Justice Triantafyllides, and I concur. I only wish to add some observations in connection with the position of trial Court findings in proceedings on appeal.

After the establishment of the Republic, the matter was first discussed—as far as the reported cases go—in *Philippos Charalambous* v. *Sotiris Demetriou* decided in December, 1960, and reported in 1961, C.L.R. p. 14. That was the position prior to the publication of the Courts of Justice Law, 1960 (No. 14 of 1960) published on 17th December, 1960, enacted apparently in pursuance of Constitutional provisions regarding the administration of justice and the establishment of the new Courts in the Republic (such as Articles 30 ; 155 (1) ; 158 ; 190, etc.)

The position regarding appeals in the new Law is mainly found in section 25 of the statute ; and was first discussed in *Stelios Michael Simadhiakos* v. *The Police* decided in April, 1961 (1961, C.L.R. p. 64). The line of approach adopted in that case, was followed in a number of subsequent appeals, both civil and criminal, ever since. I need not here refer to them, excepting for two very recent ones which cover the question raised herein : *Thomaides & Co. Ltd.* v. *Lefkaritis Brothers* (reported in this vol. at p. 20 *ante*) just referred to by Mr. Justice Triantafyllides ; and *Panayiotis Nicola Hiratis* v. *Thomas Marcou* (Civil Appeal 4505) decided in this Court on the 6th April, 1965 (unreported).

> " Counsel for the appellant has not been able to satisfy this Court—Mr. Justice Munir said in this last mentioned case—either that the reasoning behind the findings of the learned trial Court is unsatisfactory or that such findings are not warranted by the evidence when considered as a whole."

The position is clearly settled. At the hearing of an appeal this Court exercising its powers under section 25 (3)

of the Courts of Justice Law, 1960, considers the findings of the trial Court in the light of argument or criticism on behalf of the parties, and in view of the whole evidence and other material on record, comes to its own decision on the question whether the party attacking any of the findings of the trial Court has satisfied this Court that " the reasoning behind such finding is unsatisfactory or that the finding is not warranted by the evidence considered as a whole".

Coming now to the present case, the appellant has shown to the satisfaction of this Court (same as has happened in several other cases before now) that for the reasons stated in the judgment just delivered by Mr. Justice Triantafyllides, the finding of the trial Court on the facts pertaining to the issue whether the respondent was the holder of this bill for value paid in due course and in good faith, was not warranted by the evidence, considered as a whole. Such finding must, therefore, be set aside and the appellant must succeed. Respondent's claim on the bill in question, must be dismissed. In the circumstances there will be no order for costs here or in the District Court.

JOSEPHIDES, J.: I agree that, in the circumstances of this case, the finding of the trial Court that the respondent has discharged the burden of proof cast on him, to the effect that, subsequent to the illegality, value has in good faith been given for the cheque (under the provisions of section 30 (2) of the Bills of Exchange Law, Cap. 262), is not warranted by the evidence, and the appeal should, therefore, be allowed.

With regard to the powers of this Court on appeal from the findings of trial Courts, in addition to what has already been stated, I would like to quote the following extract from the judgment in *Adem* v. *Mevlid* (1963) 2 C.L.R. 3.

> " What was said by this Court in the case of *Economides* v. *Zodhiatis* 1961 C.L.R. 306, is, I think, to the point :
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> > ' Undoubtedly a Court of Appeal has the power to set aside the findings of fact of a trial Court where the trial Judge has failed to take into account circumstances material to an estimate of the evidence, or where he has believed testimony which is inconsistent with itself, or with indisputable fact. And since the enactment of the Courts of Justice Law, 1960, under section 25 (3) this Court is not bound by any determinations on questions of fact made by the trial Court and has power to re-hear any witness already heard

by the trial Court, if the circumstances of the case justify such a course. But this provision has to be applied in the light of the general principle that a Court of Appeal ought not to take the responsibility of reversing the findings of fact by the trial Court merely on the result of their own comparisons and criticism of the witnesses, and of their own view of the probabilities of the case.'

A distinction should, however, be made between the findings of primary facts and the conclusions drawn from those facts by the trial Court. The Court of Appeal is prepared to form an independent opinion upon the proper conclusion of fact to be drawn from a finding of primary facts."

In the result the appeal is allowed, the judgment of the Court below set aside and the plaintiff's claim dismissed. No order for costs here or in the District Court.

Appeal allowed. Judgment of the Court below set aside; plaintiff's claim dismissed. No order as to costs throughout.