SIONE VAIANGINA v. PESAMINO KULIHA'APAI.

(Civil Action : Sir Claud Seton C. J. Neiafu, 8th December. 1948).

Contract — Sale of launch — Written agreement not necessary — a launch not "goods" within Section 5 of Cap. 66 — Recession of verbal agreement. One party refusing to rescind — Agreement continues.

The writ in this case was in the following terms : Plaintiff claims from the Defendant £765 for unlawfully holding and using a launch of the value of £500 plus £465 damages for using the said launch for a period of 93 days @ £5 a day during the years 1947 and 1948 at Neiafu, Vava'u.

The evidence showed that on 12 September. 1947. the Plaintiff verbally agreed to sell his launch to the Defendant for £75. The defendant paid him £22. but had difficulty in raising the balance and the original agreement was mutually rescinded and a fresh agreement entered into. The terms of this second agreement appear in the judgment. At the end of March the Plaintiff changed his mind and wished to rescind the second agreement but the Defendant would not agree to rescission and claimed that the Plaintiff was still bound by the second agreement.

The Plaintiff then brought this action to recover the value of the boat (which he alleged was wrongfully detained by the Defendant) and damages. HELD. That the second agreement subsisted and all that the Plaintiff was entitled to was unpaid balance of the sale price of the launch. It was also held that an agreement for the sale of a launch could be sued on although there was no written contract.

Tafolo for the Plaintiff.

Mafua for the Defendant.

C. A. V.

SIR CLAUD SETON C. J. : On behalf of the Defendant it has been submitted that this action is not maintainable owing to the absence of a written contract and to the provisions of Section 5 of the Contract Act (Cap. 66). In my view this is not the case as I am of the opinion that a launch does not come within the meaning of the word "goods" which is the word used in Section 5.

Both parties agree that the original sale in September or October was cancelled and that a fresh agreement was come to on the 9th December. What this fresh agreement was, it is not easy to say. The parties do not appear to have been very straightforward when dealing with each other nor when giving evidence in this Court.

However, I accept the Plaintiff's version which does not differ very much from the Defendant's viz :— "I said the Defendant could run the launch from December to March and pay for the repairs and if he brought the balance at the end of that time, then he could have the launch". The balance at that time was not a large sum. The Plaintiff had received £22. a pair of cows, value not agreed, and some flour and other articles which the Defendant valued at £6 '11/2.

By the end of March the Plaintiff had apparently changed his mind and wanted to abrogate the sale entirely although he still had possession of the £22 and the flour and the other articles for which he had not paid. He brought an action in the Magistrates Court

claiming £50 from the Defendant for five days' use of the launch. The Magistrate seeing that the real matter in dispute was the ownership of the launch quite rightly decided that, having regard to the value of the launch, the case was beyond his jurisdiction and he advised the parties to apply to the Supreme Court. Subsequently the Plaintiff returned the £22 and the cows to the Defendant.

In my view, although the first agreement for sale was cancelled by the consent of the parties, the second was not because the plaintiff was anxious to annul it, the defendant was not willing, and the consent of both parties was necessary. The Plaintiff's only remedy at the end of the March, if the Defendant did not pay the balance, was to sue him for it.

It follows that the Plaintiff's action in its present form can not succeed but he is entitled to receive from the Defendant £75, the agreed price of the launch, and for that sum I give judgment. Each party will pay his own costs.

EDITOR'S NOTE: The chief justice does not give his reasons for holding that a "launch" is not "goods" within the meaning of Section 5 of Cap. 66.

Williams on Real Property says that goods and chattels are synonymous, and in ancient statutes and law writers denote personal property of every kind, as distinguished from real. A ship has been held to be "goods" coming within the provisions of the sale of Goods Act 1893 (Betuke v. Beda Shipping Co. Ltd. 1927 I.K.B. 649) but of course in that Act. "goods" is defined as including all chattles personal.

It is difficult to see why the word "goods" as used in Section 5 of Cap. 66 has a limited meaning and where the limit is to be drawn.