

BISHOP v SMITH ET AL

(In Error 8th July 1887)

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His Honour W.C. Reeves, C.J. The above case, which is of some importance on account of the bearing it has on the procedure of the Assistant Court of Appeal in the original jurisdiction, was heard on the 8th inst., and adjourned to the 15th, when His Honour the Chief Justice delivered judgment. The circumstances of the case are as follows: -

Mrs Martha Eliza Bishop a married woman carrying on business on her own account, brought an action in the Assistant Court of Appeal in its Original Jurisdiction to recover damages against Mr. F.B. Smith, the Provost Marshal, and Mr. Robert H. Haynes, Merchant, along with Mr. John Burton, his clerk, for trespass in taking away and disposing of her goods to their use. The levy was made by the Provost Marshal at Mr Haynes' instance on a judgment confessed by the plaintiff's husband who had for some time been dealing with Mr. Haynes.

Mr. Archer, instructed by Mr. E.L. Barrow, solicitor, appeared for the Appellant- the plaintiff in court below - the respondent appeared in person- The judgment is as follows: -

In this case, the appellant brought a plaint in the Assistant Court of Appeal, on the original jurisdiction side, to recover damages, which were laid at £50, against the respondents for unlawfully interfering with certain goods in the possession of and being the property of the appellant, and taking them away and disposing of them to the use of them (the respondents). The goods taken were enumerated on the face of the plaint, but neither the value of each item was set out nor the collective value of the whole. On the plaint coming on for hearing before the court on the 18th May last, one of the respondents by way of oral or at any rate informal demurrer, that the plaintiff should be nonsuited on two grounds.

1. That the plaint was in trespass to realty and therefore, that the appellant had included in one count both trespass to lands and goods
2. That if even it was a plaint in trespass to goods the jurisdiction of the court being limited, in order to give it jurisdiction, the value of the goods should have been set out in accordance with Form 'G' page 40, of the Orders of the Rules of Court.

The first objection as it is called, was overruled unanimously by the court; the majority upheld the second, and offered the appellant a non-suit, which her Counsel refused, whereupon the majority of the court entered a verdict for the respondents. The appellant appealed in presence of all the respondents in court which appeal is so noted on the record. A preliminary objection, overruled by the court, was taken that this appeal could not be entertained, because rule three of the orders and rules of the Assistant Court of Appeal in its original jurisdiction required that "the notice of the appeal must be in writing." The rule does say so. But in the first place, sec. 22, of the said Act only empowers the court to frame rules and orders for regulating the practice of their own court; and while the clause does not in terms give the rules and orders the force of law, the proviso at the end of the clause, says that the rules and orders made by the court shall not conflict with the provisions of the Act. Now, section 29 allowing an appeal to the Court of Error does not say that the appeal shall be in writing.

On the other hand, sec. 31 says that any appeal under sec. 29 of this Act shall be made in the "form and manner in which appeals are made in the court of Error from decisions given by the Assistant Court of Appeal in its appellate jurisdiction" - which of course is by parole as in an ordinary appeal from the decision or order of a police magistrate. It is true that this section (31) is repealed by the Court of Error Act of 7th February 1887, but the rules and orders referred to were made by the Judges on 16th August 1883, and allowed by the Chief Justice on 30th October, same year.

The first remark I have to make reference to the case in appeal is, that there are really no pleadings at all in proceedings in the Assistant Court of Appeal under the Act of 27th February 1883. The Court exercises the same jurisdiction as the English County Courts. Section 8 and several other sections of the Petty Debt Act 22nd September 1869, based on the County Courts Acts, are expressly incorporated in the Act. It is the policy of the County Courts Acts, as it is that of our Petty Debt Act, to enable suitors to get cheap and easy redress for wrongs, and to recover their debts by a cheap and easy process. Hence, in going into Courts suitors have only to state their cause of action in the briefest manner, without any particular technicality; only taking care to make the party sued, and the court which has to adjudicate, understand the nature of the injury sustained, the particulars of the debt or demand, and showing that there is jurisdiction in the court to try and determine the plaint. This being done, all that remains for the court is to go, in a summary way, into the merits of the case; hearing the evidence of the parties and their respective witnesses, and then deciding in accordance with the law bearing on the matter in dispute. In the case now before the court, the plaintiff, who is now the appellant, it must be admitted, framed her plaint with superfluous verbiage. But there is enough on the face of it to show that it is a plaint for trespass to the goods set out and whether it was strictly for trespass to the goods simply, or for trespass and conversion was a point to be settled by the evidence at the hearing - if jurisdiction was shown on the face of the plaint. And I do not find that the court below or the opposite party objected to the plaint on the ground of it being misleading or embarrassing; but on the ground that, as the value of the goods was not given jurisdiction in the court was not shown.

The court, under the circumstances, or rather a majority of them held that, inasmuch as the value of the goods was not set out, it might turn out in the course of the trial that the value was beyond their jurisdiction; and, moreover, they held that, in any event, when a plaint was brought for the conversion of goods the value must be set out, either on the face of the plaint or in the shape of particulars of demand, in accordance with Form "G" in the rules and order of the court, framed under the authority of section 22 of the Act conferring original jurisdiction upon the court. I need not stop to discuss the point on the present occasion, whether, in a case of trespass to goods and conversion, if the evidence show the value of the goods to be in excess of the amount to which the jurisdiction of the court is limited, though the damages claimed be within that limit, their jurisdiction would be ousted. But, the damages here claimed by the plaintiff on the face of her plaint, which the court by the record before me regards as a plaint in trespass to goods and conversion, being laid at £50 and no more, jurisdiction was shown; and the Court should have gone on and ascertained by the evidence, and that only, what the respective parties had to say and then have determined. The 4th section of the Act of

27 February 1883 defining the jurisdiction of the court say:-

"The Assistant court of Appeal besides its present jurisdiction shall have original jurisdiction in all ... pleas of personal actions where the damage claimed exceeds ten pounds, but does not exceed fifty pounds."

The case of the Apothecaries Company v Burt 5 Exch : County Court in a personal action, it being sought to recover damages against him of £20 (the extent of the jurisdiction of the court under 9 and 10 Vic : c. 95) for that, after the passing of the statute 55 Geo : 3 c. 194, on a day mentioned and on divers other days the defendant acted as an apothecary without a certificate at four places (named) within the jurisdiction of the court. By this Act of Geo. the penalty recoverable for each offence was £20; and the jurisdiction of the court being limited to £20, a prohibition was applied for on the ground, that, on the face of the plaint four offences might be proved at the hearing, the accumulated penalties for which would be £80. But the Court of Exchequer refused the prohibition on the ground that whether the facts stated in the particulars showed that in a point of law, several offences had been committed or one only, the sum sought to be recovered, notwithstanding the ambiguity in the statement of claim was, expressly limited to £20, and that the case therefore fell in the rules and orders of the Assistant Court of Appeal, it is to be observed that these are given only as "examples," and I do not think that the non-compliance with the form 'G' by the appellant in the present case constituted such a defect of the substance in the plaint as warranted the court in taking the course they did. It would seem to be optional with the parties to comply or not with form 'G' for what is contained in the Form is matter of evidence.

The essence of the plaint in the present case was the taking and seizing the goods of the appellant, carrying them away and disposing of them. There was enough on the face of the plaint to disclose a good and sufficient cause of action in trespass to goods; and the damages claimed being £50 only, the court clearly had jurisdiction. The rest was entirely matter of evidence. I think the court was wrong in deciding that they had not jurisdiction; and even if they had not, the course for them was to strike the cause out, not to enter a verdict for defendants. Under the circumstances, I see no course for me to take but to reverse the decision of the court below and set aside their judgment in the case, which I now do. Costs of this appeal to be paid by the respondents.