ORIGINAL

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IN THE HIGH COURT OF AUSTRALIA

CARR

V.

W. ANGLISS & CO. (AUST.) PTY. LIMITED

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Friday, 3rd September, 1954.

H. E. Daw, Gov. Print., Melb.

C.12280/45

CARR

v.

W. ANGLISS & CO. (AUST.) PTY. LIMITED

JUDGMENT.(ORAL)

DIXON C.J.
McTIERNAN J.
WEBB J.
FULLAGAR J.
TAYLOR J.

CARR

v.

W. ANGLISS & CO. (AUST.) PTY. LIMITED.

This is an appeal from an order of the Supreme Court of New South Wales by which an appeal to that court from a District Court was allowed. In the District Court an action of damages was brought to recover from the defendant, which conducted a cold storage business, the value of certain goods entrusted to the defendant by the plaintiff which were stolen or lost. The goods in question were rubberised rain coats which the plaintiff wished to carry over from one season to another and desired to have stored where they would not suffer from the heat of the summer. At the trial the question arose whether the contract of bailment upon which the defendant took the coats into its possession consisted in an oral executory contract containing no exceptions or limitations of liability or consisted in a receipt given for the goods endorsed with printed conditions expressed to relieve the defendant from liability in case of the loss of the goods. The learned District Court judge decided for himself without submitting the issue to the jury that the terms of bailment were constituted by an oral contract between the parties and that the receipt given by the defendant in exchange for the goods formed no part of the contract upon which the goods were held. The issue left to the jury was whether the goods were lost by the negligence of the defendant and upon this issue the jury found a verdict for the plaintiff for £766:10:0 damages. Upon appeal the Supreme Court reversed the decision of the District Court and entered a verdict and judgment for the defendant, holding that the contract of bailment was constituted by the receipt for the goods and that it relieved the defendant from liability. We agree in the opinion of the Supreme Court.

The conversation relied upon by the plaintiff as constituting the contract of bailment took place over the telephone between the plaintiff's assistant or manager and the manager of the defendant's cold storage business. The former telephoned to the defendant's cold storage and ice works and asked to speak to the manager. He enquired as to the possibility of storing the rain coats in cold storage over the summer months. The manager was unable to answer at once but he stated he would discuss the matter with the engineer of the cold store and ask him if it was suitable for that kind of storage and that he would telephone him back. After discussing the matter with the engineer the manager again telephoned to the plaintiff's assistant. He said that the storage was suitable for the purpose desired and indicated that he had spoken to the engineer who advised that the store was suitable to take that sort of coat. He asked the plaintiff to pack the rain coats in wooden cases, to line the cases with sisalkraft and to fill each case, packing them fairly loosely. He enquired how many cases there were and the plaintiff's assistant replied that there were about a dozen. The defendant's manager asked the dimensions of the cases and they were given. The dimensions varied slightly in size and he said he would have enough room and would be able to clear a space for others. He was told that the deliveries would commence as the cases were packed. There was some discussion as to sending in the account monthly.

We do not think that such a conversation amounted to a contract. A jury could not reasonably find that the parties then intended to make a completed contract containing all the terms of the bailment and binding the plaintiff to deliver and the defendant to receive about twelve cases of rain coats for storage for the period contemplated without specifying any further terms. It appears to us that it was a conversation of a preliminary character amounting to a business arrangement to be carried out in

whatever should be the customary manner. It appears clearly enough from the evidence of the plaintiff's assistant given in his re-examination that when he contemplated putting the cases into storage he knew that in transactions of the description in question a document containing some clauses would ordinarily be given when the goods were received into storage. A storage receipt was in fact given in exchange for the goods. On the face of it was a brief statement: "This receipt is not negotiable. In accepting this receipt the owners of goods mentioned above accept and agree to all the conditions printed on the back hereof". Unfortunately for the plaintiff two of the conditions on the back negatived any liability for the loss of the goods on the part of the defendant. Condition 6 said that "Goods are stored at storer's sole risk; insurances shall be his responsibility". Another provision, No. 10, which I need not read in full, provided that the defendant should not be responsible for any loss or damage in respect of the goods whatsoever or howsoever occasioned. There can be no question, and there is no question, that the reference on the face of the receipt to the endorsements was sufficiently legible and brought clearly enough to the notice of those who read it the conditions on the back. It is admitted by the plaintiff's assistant in his evidence that he did in fact see the document although he did not read the conditions on the back of it. He saw the receipt when it was brought to him. He says that he was familiar with that kind of transaction and that in such transactions there were always what he himself called "a lot of extraneous items written on it". Unfortunately the items were by no means extraneous but directly affected the terms on which the goods were held. We think that when the goods were delivered in this manner and in exchange for them the document was given, it was by this means the contract of bailment was constituted. The terms on which the goods were bailed for safe custody and cold storage were communicated by the receipt and accepted. The defendant intended to receive them on no other

terms. The document stated the terms clearly enough, it was given in exchange for the goods, and accepted by the plaintiff. The contract of bailment was expressed by the receipt and no jury could reasonably find otherwise. Accordingly the decision of the Supreme Court was right. The appeal is dismissed with costs.