

IN THE COURT OF APPEAL ✓

DOMINICA

Civil Appeal No. 3 of 1969

Between:

ANGELO BELLOT
as Personal Representative
of Estate Robert S. Bellot
(deceased) "Nobaby Estates"

Plaintiff/Appellant

and

JOSEPH ("Del") ALEXANDER

Defendant/Respondent

Appellant in person
Dr. N.J.O. Liverpool for respondent

1970, March 20

JUDGMENT

LEWIS, C.J.

This appeal concerns the rental of a portion of land at Nobaby Estate. The appellant's father rented a portion of land, 4 acres in extent, to the respondent. There was no written contract. The question arose in court, when the plaintiff brought his action for rent, whether the rental at the commencement was 5 shillings or 10 shillings per annum. The plaintiff said it was 10 shillings, the defendant said it was 5 shillings. The magistrate accepted the evidence of the defendant and held that it was 5 shillings.

The question also arose as to whether at some stage, not specified, the appellant had increased the rental. The appellant had sent the respondent a statement of account some 14 or 15 days before he sued him, that is, on the first of December, 1969. The case was heard very promptly, on the 22nd of December. It seems to be the view of the appellant that by sending the respondent that statement of account he thereby notified the respondent that he was claiming at the increased rental set out in that statement. There was also evidence that at some time, neither party said when, the appellant claimed to increase the rental and the respondent refused.

It would seem from the evidence that the respondent was claiming that he had bought the land from the appellant's father and that he had lost his receipt. The magistrate held

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quite properly that neither party had produced any written evidence in support of his case, and he accepted the evidence of the defendant that there had been no increase of rental. He gave judgment for the appellant on the basis of 5 shillings a year per acre in respect of 4 acres, that is, £1 per annum.

The grounds of appeal raise a question as to the admissibility of a document. The appellant tendered in evidence a form of a contract which he said he was giving his tenants. The magistrate refused to admit it in evidence. The appellant says that this was an error in law. As I have already pointed out to the appellant, the magistrate acted correctly. A mere form of a contract cannot serve in evidence as an actual contract entered into in writing between the parties, unless the parties consent.

The magistrate said in his judgment, "There being no agreement shown to the Court by either Plaintiff or Defendant, and the Defendant states the land belongs to the Plaintiff," - in other words admits the land belongs to the Plaintiff - "I give rent to the Plaintiff from 1951 to 1969". No cross appeal was taken as to the length of time for which the magistrate allowed rent, and in my view since it has not been appealed against, the amount should stand.

I should just like to say that because the appellant is not represented by counsel and this Court is most anxious that no person should come to the Court and go away with the idea that he has not been given a full opportunity to present his case, the Court has listened at great length and with great patience to his presentation. A great deal of what he has urged on the Court has nothing whatsoever to do with the points which are the basis of the appeal, one being the admissibility of the form of contract, the other a plain question of fact, dependent upon the credibility of the witnesses.

The result is that, in my view, this appeal should be dismissed with costs.

(Allen Lewis)
Chief Justice

GORDON, J.A. I agree that the appeal should be dismissed with costs.

(K.L. Gordon)
Justice of Appeal

ST. BERNARD, J.A. (Ag.) I agree that the appeal should be dismissed with costs.

(E.L. St. Bernard)
Justice of Appeal (Ag.)