

after the cow but found it was missing. The appellant had taken away the cow without his knowledge and sold it for two hundred and forty dollars. The respondent denied that he had appointed the 16th March, 1969, the day for valuation of the cow.

Joseph Gillian, a butcher of thirty-six years standing, stated that he did not see the cow but assuming a cow was properly cared, at the end of two years to two and a half years it would be worth about four hundred to five hundred dollars, and at three years it would be worth five hundred dollars.

The appellant stated that on the 8th March, 1969, she met the respondent and he told her he would not keep the cow any longer. As a result she sent her brother to him and from what her brother told her she went on the 16th March, 1969, with two men - one to value and one to buy the cow. She sold it for two hundred and forty dollars.

There are three grounds of appeal, namely -

- (a) that illegal evidence was admitted by the court and that there was not sufficient legal evidence to sustain the decision after rejecting such illegal evidence;
- (b) the decision is unreasonable and cannot be supported having regard to the evidence; and
- (c) the damages are unduly excessive.

In regard to the first ground of appeal counsel gave no details as to what illegal evidence was received and decided to abandon this ground of appeal.

Counsel argued grounds two and three together and contended that there was no evidence of the value of the cow given by the respondent on which the magistrate could have made a finding. He further urged that in the absence of any finding of bad faith on the part of the appellant, the price at which the cow was sold should have been accepted.

The magistrate, in his reasons for judgment, stated -

"In consideration of all the evidence, I came to the conclusion that defendant took advantage of the plaintiff's absence to sell the cow without any regard for the plaintiff's interest provided she obtained the original value (\$200) and whatever expense she had incurred. I was satisfied that she had not obtained a fair price. Further, on the evidence, I was satisfied that the cow was of normal size and estimated its value at \$400."

/In my view

In my view, on the evidence, there were sufficient facts on which the magistrate could have made a proper estimate of the value of the cow and that the price of two hundred and forty dollars for which the cow was sold was entirely too low.

The magistrate, in his findings, did not use the term "bad faith", but he stated that the appellant took advantage of the respondent's absence and sold the cow without any regard for his interest. There was sufficient evidence for the magistrate to come to the conclusion that there was bad faith on the part of the appellant. I do not find merit in the appeal and I would dismiss it with costs.

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

GORDON, C. J. (Ag.)

I agree that this appeal should be dismissed with costs.

(K. L. Gordon)
Acting Chief Justice

CECIL LEWIS, J.A.

I also agree with the above judgment.

(P. Cecil Lewis)
Justice of Appeal