

BURNS PHILP (SOUTH SEA) CO. LTD. AND SHELL COMPANY  
(PACIFIC ISLANDS) LTD.

v.

MUNSAMI NAIDU

[SUPREME COURT, 1963 (Knox-Mawer Ag. P.J.), 2nd, 16th August]

Appellate Jurisdiction

Bill of Sale—consideration—whether sufficiently set forth—recitals—Bills of Sale Ordinance (Cap. 193) s. 7.

To ascertain the true consideration in a Bill of Sale within the meaning of s. 7 of the Bills of Sale Ordinance regard must be had to the whole document. Where the true consideration is set forth in a recital which is incorporated in the statement of consideration by the words, "as hereinbefore mentioned and in pursuance of the premises", there is a sufficient compliance with s. 7.

Case referred to:

*Badal v. Bhagoti Prasad* (1941) 3 F.L.R. 296.

*Appeal from judgment of the Magistrate's Court.*

*McFarlane* for the appellants.

*Koya* for the respondent.

The facts sufficiently appear from the judgment which is reported only upon the question whether the consideration in the Bill of Sale was sufficiently "set forth".

KNOX-MAWER Ag. P.J. (in part) [16th August, 1963]—

This is an appeal against the judgment of the learned Senior Magistrate at Lautoka in his Civil Case No. 297 of 1962. The facts themselves are not in dispute and are set out in the Statement of Claim as follows:—

"(1) The defendant was indebted to Shell Company (Pacific Islands) Limited in the sum of three hundred and ninety-eight pounds eleven shillings and six pence (£398 11s. 6d.) and by assignment in writing dated the 26th day of June, 1961, the said sum was duly assigned to Burns Philp (South Sea) Company Limited notice of which assignment was duly given to the defendant on or about the 5th day of December, 1961.

(2) On the 7th day of December, 1961 the defendant gave a Bill of Sale to Shell Company (Pacific Islands) Limited with the consent and approval of Burns Philp (South Sea) Company Limited to secure the said sum of £398 11s. 6d. with interest as therein set out and payable as in the said Bill of Sale specified such Bill of Sale being registered as 61/2218 secured over the defendant's vehicle No. B900.

(3) The defendant made default in payment of the sum of £15 due on the 30th day of April, 1962, and such vehicle was duly seized on the 5th day of May, 1962 in pursuance of the powers conferred by the said Bill of Sale.

(4) The said vehicle was subsequently advertised for sale by tender and sold for a sum of £220.

(5) After the sale of the said vehicle a balance of £173 16s. 1d. remained owing by the defendant to the plaintiff."

A number of defences were raised by the appellants [*sic*] in the Court below all of which, with one exception, were disposed of by the learned trial Magistrate and his findings thereon have not been attacked. He held, however, that the Bill of Sale given by the respondent did not set out the true consideration for which it was given and that by virtue of the provisions of section 7 of the Bills of Sale Ordinance (Cap. 193, Laws of Fiji) the security was fraudulent and void and the seizure thereunder accordingly illegal.

It is against this finding that the appellants now appeal, their four grounds really being no more than that on a proper construction of the Bill of Sale the true consideration is expressed therein. Section 7 of the Bills of Sale Ordinance provides:

"Every bill of sale to which this Ordinance applies shall be duly attested, and shall be registered, within seven days after the making or giving thereof if made or given in Suva, or within twenty-one days if made or given in any other part of the Colony than the city of Suva, and shall set forth the consideration for which such bill of sale was given; otherwise such bill of sale shall be deemed fraudulent and void."

In *Badal v. Bhagoti Prasad* 3 F.L.R. 296 it was held that the "consideration" referred to in the section must mean the true consideration.

The reasons for the learned trial Magistrate finding as he did are set out in his judgment in this manner:

"The recital in this bill of sale does accurately set out the state of affairs that existed between the three parties at the time: 'Whereas the grantor incurred a debt of three hundred and ninety-eight pounds eleven shillings and six pence (£398 11s. 6d.) (hereinafter called 'the principal sum') to the Grantee which debt was subsequently assigned by the Grantee to Burns Philp (South Sea) Company Limited and whereas the grantor has requested the said Burns Philp (South Sea) Company Limited to discharge a Bill of Sale registered No. 580/1042 secured over a new Holden Station Sedan Reg. No. B330 and has offered to give security for payment of the principal sum as hereinafter appearing but has stipulated that such security be given to the Grantee which the said Burns Philp (South Sea) Company Limited has agreed . . . '.

It is what follows that defendant says is objectionable: 'Now therefore this indenture witnesseth that in consideration of the principal sum now owing by the Grantor to the Grantee as hereinbefore mentioned and in pursuance of the premises . . . '.

No such thing was mentioned in the recital. On the contrary the recital makes it clear that the debt had been assigned by the Grantee to Burns Philp (S.S.) Co. Ltd.

There is nothing to prevent the Bill of Sale following the recital and giving Shell Company the security and a Third Party, Burns Philp (S.S.) Company the benefit of the covenants to pay instalments but this has not been done.

It is quite impossible to read the recital and the consideration together. In the circumstances it is only incidental that the evidence supports the facts set out in the recital and negatives the facts set out in the consideration. As set out in the Bill of Sale the wording is contradictory and ambiguous.

As worded this Bill of Sale does not set out the consideration accurately."

The circumstances leading up to the giving of the Bill of Sale in favour of the Shell Company (Pacific Islands) Limited and the bona fides of the respondent were described in two further paragraphs:

"It was his personal mistrust of Burns Philp (S.S.) Co. Ltd. and their solicitor, Mr. Stuart, that caused him to ask for the Bill to be in the name of Shell Company and to have it sealed in the office of his own solicitor, Mr. Dean. Subsequently, presumably in the hope of furthering his case, he has falsely alleged that the Bill was in the name of Shell Company at Burns Philp's request.

Although defendant himself requested that this Bill be made in the name of Shell Company and such evidence as there is of actual fraud at that stage of the proceedings is of defendant's own fraud by subsequently denying that it was at his request, I find that by virtue of section 7, Cap. 193, this Bill of Sale, as drawn, is deemed to be fraudulent and void."

In my view the learned trial Magistrate has restricted his interpretation of the consideration appearing on the face of the Bill of Sale within too narrow a limit. I think that to find the true consideration within the meaning of section 7 of the Bills of Sale Ordinance regard must be had to the whole of the document in question.

If this is done it is apparent that the recitals are included in the consideration by two references "as hereinbefore mentioned and in pursuance of the premises". Thus, the consideration for which the Bill of Sale was given, namely the discharge of the security to Burns Philp (South Sea) Company Limited upon the execution by the respondent of the present security in favour of Shell Company (Pacific Islands) Limited, is set forth in compliance with section 7 of the Bills of Sale Ordinance.

For these reasons the appeal of the second appellant is allowed. Judgment is entered for the second appellant for £173 16s. 1d., and the respondent's counter-claim against the second appellant is dismissed. The second appellant is awarded costs against the first appellant both in this Court and in the Court below.

*Appeal of second appellant allowed.*

Solicitors for the appellants: *Stuart and Co.*

Solicitors for the respondent: *Koya and Co.*