IN THE SUPREME COURT OF NEW ZEALAND
PALMERSTON NORTH REGISTRY

N.Z.L.R.

M.22/77

Special Consideration

232

BETWEEN STANLEY SAUNDERS of 31 Monmouth St, Feilding, Insurance Agent

Appellant

AND THE MAYOR, COUNCILLORS AND CITIZENS OF THE BOROUGH OF FEILDING a duly constituted body under the Municipal Corporations Act 1954, 135 Manchester Street, Feilding

Respondent

Hearing: 9th May, 1979

Counsel: Dron for Appellant
Coles for Respondent

ORAL JUDGMENT OF THORP, J.

This is an appeal from a decision of His Worship Mr Watts, Stipendiary Magistrate, given at Palmerston North on the 12th October, 1976, in which he gave judgment for the Feilding Borough Council, the Plaintiff in the action and the Respondent in this Court, against a Mr S. Saunders, the Defendant in the action and the Appellant in this Court, for the sum of $200 and costs.

The Council had claimed a sum of $230.06 by an action commenced by a plaint note supported by a default summons in which the particulars of the claim brought were stated in the terms:

> "Take notice that the plaintiff claims to recover from you the sum of $230.06 being the amount owed to the Plaintiff by the defendant for shifting furniture to 31 Monmouth Street, Feilding and for transferring of Mr J. G. Russells furniture from B. and H. Building to 156 Lethbridge Street, Feilding and for accommodation supplied to Mr J.G. Russells family at Aldeva Motels for four nights at $10.00 per night, in November 1975, Particulars whereof have been delivered."

At the conclusion of the evidence the learned Magistrate delivered an oral decision. In it he described the nature of the Council's claim in the following words:

> "It is fair to say that the Council's claim arises under three headings. Firstly there are the costs of housing its employee for four days. Secondly there are the costs involved in the double handling of the employees furniture. The basis for those two items is that they represent the damages suffered by the Council as a result of Mr Saunders not leaving the house by the time the employee arrived. The third heading represents the cost of shifting Mr Saunders furniture to his new house. The basis of this claim is that it was done at the request of Mr Saunders."

He had found as facts, and the justification for his finding these facts was not contested in this Court:

1) that the parties had entered into a tenancy agreement to be terminable by one month's notice in writing under the Property Law Act;

2) that the Council's Town Clerk had given one month's verbal notice to quit to the Appellant on the 7th October, 1975;

3) that the tenancy agreement was not however determined in writing as required by law, the learned Magistrate thereby obviously referring to the need to give one month's written notice pursuant to S.105 of the Property Law Act 1952;

4) that the removal of Mr Saunders' furniture was done at his request and in such a way that the Council was justified in assuming that he was prepared to pay the costs;

5) that he was unable to determine the separate cost of shifting Mr Saunders' furniture, the third head of claim and the particular head on which he plainly considered a legal cause of action had been shown.

At the conclusion of the learned Magistrate's decision, having noted his inability to determine the amount legally claimable, he invited counsel for the Plaintiff to abandon the amount of the claim which exceeded $200, advising that

if this course were taken he was prepared to give judgment under S.59 of the Magistrates Court Act 1947. I was informed that upon such invitation being given the Plaintiff's counsel advised his agreement to abandon the excess over $200. The record of the oral judgment proceeds:

> "Judgment accordingly for the Plaintiff for $200.00. Costs and witness expenses to be fixed by the Registrar."

In considering the two grounds of appeal notified in the memorandum of points to be taken on appeal by counsel for the Appellant, counsel for the Respondent invited the Court to consider that the learned Magistrate was not in fact dealing with one claim but with two separate claims, the first being a claim based on breach of what was described by the Town Clerk as a gentlemen's agreement whereby Mr Saunders had agreed to quit the premises upon a month's oral notice in the event of their being required for an employee of the Council, and the second being a claim for non-payment for the services rendered by the Council to Mr Saunders by removing his furniture.

I cannot read the oral judgment in any other way than as a statement by His Worship that, because of the difficulty he found in ascertaining the amount of any claim recoverable at law, he was giving judgment on the basis of an abandonment of the excess over $200 for that amount, in purported exercise of his jurisdiction under S.59 of the Magistrates Court Act, 1947, to give such judgment as the Court found to stand with equity and good conscience.

The first of the two points in the memorandum of points to be taken on appeal was that the learned Magistrate had no jurisdiction to deal with the matter under S.59 as the amount claimed exceeded $200. In support of that proposition the Appellant relied upon the decision in Hearn v. Miller (1900) 19 N.Z.L.R. 129, a decision of the Court of Appeal. That

appeal was not directly on S.59 or its predecessor but was a decision on the appeal sections of the Magistrates Court Act, 1893, the statute then controlling the exercise of the Magistrates Court's jurisdiction.

The case decided that the phrase "amount of the claim" in s.s. 1 of S.159 of the 1893 Act meant the amount originally claimed, and not the amount of judgment ultimately given. However, the ratio of the decision in my opinion does govern and determine the proper manner of exercise of the jurisdiction presently given to our Magistrates Courts by S.59 of the 1947 Act.

If it is inappropriate, as the Court of Appeal held in Hearn v. Miller, to restrict a right of appeal once this has vested by the issuing of a plaint note by reference to the amount of the judgment, it seems to me equally inappropriate to restrict a right of appeal by allowing, let alone encouraging, abandonment of part of the original claim in order to found jurisdiction under S.59, the exercise of which must inevitably negative the unsuccessful party's right of appeal.

I am encouraged towards that view by two passages in the decisions given in Hearn v. Miller. The first appears as part of the decision of Stout, C.J. at page 135 and consists of the adoption of the decision of North v. Holroyd, a decision of the Court of Exchequer Chamber in which Kelly, C.B. said:

> "It is impossible to say that the plaintiff can abandon his claim so as to deprive the defendant of his right of appeal, which was already vested by the bringing of a claim exceeding £20."

Then in the decision of Conolly, J. there is at the foot of page 141 a similar approval of the principle in North v. Holroyd, followed by a reference to the decision in Harris v. Dreesman. The passage in question refers to the decision of Alderson, B. in Harris v. Dreesman, and in particular to a statement made by him when a question of jurisdiction

had been raised, on which he is reported to have said:

> "The cause was of a sufficient amount when the action commenced; it was therefore of the amount sufficient for an appeal, otherwise it would always be in the power of a County Court Judge to avoid an appeal by finding a verdict under £20."

In my view S.59 was intended to permit the Magistrates' Courts to find judgments in accordance with equity and good conscience and without regard to strict legalities in the case of small claims. The statute specifies that the exercise of such jurisdiction shall exist when the amount claimed or the value of property claimed or in issue does not exceed $200. It would seem to me inappropriate that the jurisdiction should be available in respect of any claim within the total jurisdiction of the Magistrates' Courts so as, for example, to allow the Court to find for the Plaintiff in the sum of $200 and costs whether initially the claim be $1000, $2000 or $3000, upon the ground that equity and good conscience favoured the Plaintiff.

A second point was taken in the memorandum of points to be taken on appeal that in any event the learned Magistrate had no power to apply S.59 as the failure to give proper notice by the Council under S.105 of the Property Law Act, 1952 went to the root of the cause of action. The Appellant cited in support of that proposition James v. Crockett & Anor (1920) G.L.R. 368. This was a decision under the then Land Agents Act 1912 which contains a similar provision to that in the Real Estate Agents legislation prohibiting enforcement of a claim unless a written authority has been given.

Counsel cited a second decision from the Magistrate's Court jurisdiction which dealt with a claim under the Fencing Acts where the requisite notice under those Acts had not been given by the plaintiff. I have considerable doubt whether the present case is analogous to that considered in James v. Crockett & Anor and would have wished to reserve decision

on that point. In view of my findings on the first point taken it is unnecessary to do more than to record that the second point was taken.

There is no doubt that the learned Magistrate considered that the merits of this case lay with the Plaintiff. Equally there is no doubt that the Defendant did receive benefit from the work performed for him by the Plaintiff and Mr Dron for the Appellant accepted that it would be inappropriate, in the event of the appeal being allowed, that any order for costs be made in the Appellant's favour.

In the result the appeal is allowed and the judgment of the Magistrate's Court is vacated and an order made for entry of judgment for the Appellant but without any order for costs.

SOLICITORS:

Opie & Dron, Palmerston North for Appellant
Barltrop Cobbe & Evans, Feilding for Respondent