KAMARA *v.* JOUDA

SUPREME COURT (Dobbs, J.): January 12th, 1966
(Civil Case No. 261/65)

[1] **Lien—enforcement—legal lien—no right to damages for storage of goods:** Even if he gives notice to the owner, the person in possession of property under a lien cannot make a claim against the owner for user of the place where the property is detained or otherwise for keeping it (page 345, lines 18–23).

[2] **Lien—extinguishment—legal lien—lien lost if possession lost or redelivery effected:** A legal lien is lost if possession of the property is lost: redelivery to the owner or his agent, even if made under a mistake, destroys the lien and cannot be recalled (page 345, lines 11–14).

The plaintiff brought an action against the defendant, claiming the return of a lorry or damages in lieu thereof, partly being the amount expended by the plaintiff arising out of repairs executed by the defendant and partly damages for the retention of the vehicle. The defendant counterclaimed for damages for work done and materials supplied at the plaintiff's request.

The plaintiff delivered a lorry to the defendant for repairs and a respray. On its return to the plaintiff, the lorry broke down. According to the plaintiff this was due to the defendant's faulty workmanship, whereas the defendant alleged that it was occasioned by dirty oil in the engine and choking of the lubrication system. The lorry was returned to the defendant who again repaired it. The plaintiff thereafter refused redelivery of the lorry, whereupon the defendant handed it over to the plaintiff's driver. The defendant alleged that he had a lien over the lorry.

Coker for the plaintiff;
Anthony for the defendant.

DOBBS, J.:

[Having set out the pleadings and commented upon them, the learned judge continued:]

On the facts I have the following findings and comments to make. The plaintiff put his lorry into the defendant's garage some time in October 1964 for repairs to a broken crankshaft. The defendant fitted a new crankshaft and bearings for which the plaintiff paid Le270 so that the defendant might purchase them. He also did other

work on the lorry, including respraying: on this point, although this was denied in the pleadings the plaintiff admitted in evidence that the respraying had been done.

I accept the evidence that the defendant charged Le120 for the work on the engine and Le80 for the bodywork including respraying. I do not believe the plaintiff when he said he advanced Le90. I believe the defendant when he says that plaintiff gave him Le76 but I do not accept that he paid out of this Le64.60, for which he put in Exhibits C and D as vouchers. The items shown on Exhibit D were purchased on December 31st, 1964 and appear to relate to the relining of brakes, about which no evidence has been given. Now, according to the defendant, the lorry was delivered to the plaintiff before Christmas so these items bought on December 31st, 1964 could not apply to this vehicle unless it was brought back for brake relining; indeed, there is no evidence that this happened. With regard to Exhibit C, I have my doubts about the items "2 king pins and 4 bushings"; I should have thought these would be used for repairs to the steering but no evidence was given that repairs to steering had been carried out. Anyway, the date of purchase, *viz.*, November 12th, 1964, fits in with that of the purchase of the crankshaft which was two days previously on November 10th, 1964. I should allow the defendant only the items on Exhibit C amounting to Le28.40. This means that on the defendant's figures there is a credit due to the plaintiff of Le47.60. Whether or not the plaintiff gave the defendant Le64 for piston rings, as he alleged, does not seem relevant because there has been no allegation that these rings were not fitted. The same applies to the Le110 alleged to have been paid for a starter and Le40 for a battery. There is no allegation that these were not put onto the lorry. The defendant denied that the plaintiff paid him anything specifically for workmanship and I do not accept the plaintiff's statement that he paid Le90 on account of workmanship. He being a businessman, I should have thought he would have obtained a receipt for this amount if he had paid it.

I do not accept the plaintiff's contention that the second breakdown was brought about by the defendant's fitting an unsuitable crankshaft. The plaintiff called no expert evidence on this point and the defendant was emphatic that the job was done properly and the lorry in good running order when handed over to the plaintiff.

There has been some dispute as to when the lorry was handed

over. The plaintiff alleges that this was on February 26th, 1965, *i.e.*, two days before the second breakdown. I can see his reason for making this allegation, as he wanted to add colour to his contention that the second breakdown was due to faulty workmanship on the first repair. The defendant alleges that the lorry was handed over to the plaintiff before Christmas 1964. I do not believe the plaintiff. When I asked him when the lorry was taken for examination to get the licence due for the first half of 1965, he was very evasive. I believe the defendant when he said that the lorry was delivered to the plaintiff before Christmas 1964. I also believe the defendant when he ascribed the second breakdown to dirty oil in the engine and choking of the lubrication system. I am satisfied that this state of affairs did not come about through any faulty workmanship on the part of the defendant.

In evidence the plaintiff says he demanded the return of the lorry in April 1965; he says also that he demanded the return of the money he had given to the defendant. If in fact he did demand the return of his lorry, one can understand the defendant's refusing to return it when it was coupled with a demand for return of money paid. However, I am not satisfied on this point. The plaintiff's own witness, Alusaine Jalloh, said the defendant told him the vehicle was again in running order and gave it to the witness to take to the plaintiff. The witness drove the lorry, which appeared in good running order, to the plaintiff and the plaintiff told him to take it back to the defendant and he would see the defendant himself. The defendant denies that any demand was made. This is supported by Exhibit A which the defendant caused to be written to the plaintiff. The plaintiff admitted in evidence that he did not go to see the defendant after he received Exhibit A.

I think the foregoing covers the facts. I have one further comment to make. The plaintiff called as a witness one Yaya Kamara, a tailor, to prove that the defendant had admitted that the crankshaft was not the right size. I do not believe a word of this man's evidence, except that he may perhaps do his tailoring work in a place adjoining the plaintiff's cement store at 27, Kroo Town Road. I think the plaintiff brought him here to try to bolster up his case. I have anxiously considered whether to take action against the witness for perjury, but in this instance I shall content myself with a strict warning that the court views such conduct with grave disapproval and can take stern action.

On the facts I find that the plaintiff has not proved his case

for detention. He has not proved the essential, *viz.*, demand for return and a refusal by the defendant. Even if I could on the pleadings have dealt with a claim for negligence in the repairing of the vehicle, I find no evidence to support such claim.

Whether or not the defendant had a lien, as he alleges in his counterclaim, in my view he lost it so far as the balance for the first repair was concerned when he handed over the lorry to the plaintiff before Christmas 1964. With regard to the second repair, he lost the lien when he handed over the lorry to the plaintiff's driver for delivery to the plaintiff. I refer to 24 *Halsbury's Laws of England,* 3rd ed., at 170, para. 320, which reads: "A legal lien is lost if possession is lost, so that redelivery of goods to the owner or his agent destroys the lien, and when once made cannot be recalled, even if made by mistake. . . ."

The defendant is not entitled to charge for the lorry's remaining in his garage. Even if he had had a lien, the following passage from 24 *Halsbury's Laws of England,* 3rd ed., at 167, para. 313, applies:

> "The holder of the property, as a rule, is not permitted to make any claim for the use of the place in which the property is detained, or otherwise for keeping it, and it makes no difference that, by advertisement or otherwise, he notifies the owner that such a claim will be made unless the goods are removed and such expenses paid on or before a stated time."

Although I do not agree that the defendant has made out a case for damages, I am satisfied that he repaired the lorry the second time at the request of the plaintiff and he should be paid. I accept his evidence that his charge for the second repair was Le40 for workmanship and that he spent Le55.50 on materials, making a total of Le95.50 for this second repair. I find that, on the first job done between October and December 1964, he is owed a balance of Le152.40.

The plaintiff's claim against the defendant is accordingly dismissed with costs to be taxed. On the counterclaim the defendant is to have judgment against the plaintiff for Le247.90 with costs to be taxed.

Order accordingly.