



Legal News Ballard v. Smith Bishopstone 1860

Faringdon County Court - Monday, July 2
(before J. B. Parry, Esq. Q.C.)

Ballard v. Smith – This was an action brought by the plaintiff, a woolstapler, living in Bishopstone, and carrying on business at Faringdon, against the defendant, who is a carrier, and has recently commenced business as a horse dealer, at the latter place, to recover a balance of £11 3s. 6d., on a breach of warranty, of a grey mare, sold by the defendant of the plaintiff .

There was another action between the parties, in which Smith sued Ballard for £16, as the unsettled balance on the sale of the mare in question, but as the result of that action must necessarily be guided by the decision in the one for breach of warranty the latter one was gone into.

Mr. Williams, instructed by Mr. Haines, appeared for the plaintiff, and Mr. Milward was instructed by Mr. Mantell on behalf of the defendant.

Mr. Williams briefly opened the case explaining that the plaintiff purchased a mare of the defendant for £16 and two cows, on the 17th May last. The mare was warranted sound, and quiet to ride, and the two cows were delivered to the defendant with an I.O.U. for the £16, to be paid on the subsequent day, the plaintiff receiving the mare, but she turned out contrary to the warranty. The plaintiff refused to pay the remaining £16, and sent the mare back to the defendant. The defendant refused to take her in, and plaintiff then sent her to livery, after which she was sold by auction, in the Faringdon Market, for £12 5s. The plaintiff had paid Auctioneer's charges, and livery stable keep amounting to £3 8s 6d. which left him £11 3s. 6d. out of pocket by the transaction; valuing his cows at £20, and it was not until the defendant saw the handbills of sale, that he commenced his action for £16.

Mr. Williams called Mr. Nathaniel Ballard, the plaintiff, who said he purchased the mare of the defendant for two cows, and £16. That defendant said in reply to his enquiry whether she was sound? That she was sound, and quiet to ride. He then took the mare to his stable. When his mother saw her, she asked defendant if she was quiet? Upon which defendant replied "She is as quiet as a lamb, and as nice a hack as ever was rode". He noticed at the time of the deal, an apparent enlargement about the mare's hocks and called the defendant's attention to it, but he assured him there was nothing the matter, "and the mare was a sound as a bar of brass." He rode the mare home to Bishopstone, that evening, and back the next day, and found her to be a very vicious kicker, and would kick for a quarter of an hour together, and he was thrown by her on one of these occasions. He then discovered that the mare was unsound, and being

such a vicious kicker, he could not do anything with her, and sent his man with her to the defendant, who refused to receive her back, when she was sent to livery, and subsequently sold by auction.

Charles Hunt, of Faringdon, labourer, proved that he stood within a few yards of the parties, when they were making the deal, and that he heard the defendant say "I will warrant her quite sound, and quiet to ride."

Mrs. Ballard, the mother of the plaintiff, corroborated the plaintiff's evidence, as to what took place when she saw the mare in the stable.

Mr. Richard Reynolds, of Faringdon, deposed to riding the mare a short distance at the plaintiff's request, and she kicked all the time he was on her back. He described her as the most vicious brute he ever saw.

Mr. Pythian, veterinary surgeon, stated that he examined the mare, and found her unsound from thoroughpins, in each hock, which must have existed at least two months. - This was the plaintiff's case. Mr. Milward addressed the Court for the defence, and contended that there was no warranty given, which he should prove by the defendant, and endeavoured to show that the plaintiff had been riding the horse furiously up the banks and in the streets, and that this would cause the thoroughpins. He then called the defendant, who, he said, would give quite a different version of the deal, and would prove that nothing was asked by the plaintiff about soundness, and that no warranty was given; but the defendant, after giving about the same account of the commencement of the deal as the plaintiff, and denying that the witness Hunt was anywhere near the spot, admitted that he did tell the plaintiff the mare was sound and quiet, upon which the Honour immediately stopped the case, and gave judgment for the plaintiff, with costs. This decision, of course, nonsuited the plaintiff (Smith) in the other action.

Reading Mercury, 7 July 1860