

1. The disease of tuberculosis is hereby exempted from the operations of sections 3, 4, 5, 6 and 7 of the Animal Contagious Diseases Act, 1903.

PELTON, Co. C.J.:—Appeal by plaintiff from a magistrate's judgment in favour of defendant, heard before me at Bridgetown, without witnesses on either side, upon a very bald statement of admitted facts. The facts are as follows: Defendant, with full opportunity for inspection, bought a cow from plaintiff for \$30, paid cash, \$15, agreed to pay the balance in a month, took the cow away, but had not paid the balance. At the time of sale the cow had tuberculosis, which is an infectious or contagious disease under sec. 2 of the Animal Contagious Diseases Act, ch. 75 R. S. C., but, at the time of sale, plaintiff did not know that the animal had the disease. I assumed that defendant was in like ignorance, though the statement of facts is silent on that point. About four weeks after the purchase, defendant killed the cow without giving notice, under sec. 3 of the Act, and without examination by a veterinary. The day before the killing, defendant told plaintiff that the cow was sick. (It does not appear, from the statement, that he told the plaintiff that she had tuberculosis, or that the defendant then knew that such was the case), and asked plaintiff if he was willing to do something about it, but plaintiff refused to do anything, and said he would collect the balance of the price. Defendant did not offer to return the cow to plaintiff. Under the statement of facts, the contract of sale was admittedly an honest one, and made without concealment, and in complete ignorance that the animal was diseased. Having no evidence of the circumstances, outside of the statement, I am, of course, confined to the admitted facts.

Mr. A. L. Davidson, for the defendant, rests his defence upon sec. 38 of the Animal Contagious Diseases Act, above mentioned, which provides that "Every person who sells or disposes of, or puts off, or offers or exposes for sale, or attempts to dispose of or put off, any animal infected with or labouring under any infectious disease, or the meat, skin, hide, horns, hoofs or other parts of an animal infected with or labouring under any infectious or contagious disease at the time of its death, whether such person is the owner of the animal, or of such meat, skin, hide, horns, hoofs or other parts of such an animal, or not, shall, for every such offence, incur a penalty not exceeding two hundred dollars."