

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL NO: 37/90

BEFORE: THE HON. MR. JUSTICE WRIGHT, J.A
THE HON. MISS JUSTICE MORGAN, J.A
THE HON. MR. JUSTICE GORDON, J.A (AG.)

BETWEEN	CLEMENT CAMPBELL	APPELLANT
A N D	DR. PERCY MILLER	1ST RESPONDENT
A N D	COCOA INDUSTRY BOARD	2ND RESPONDENT

Errol Carter for Appellant

L. Hylton for Respondents

April 29, and July 19, 1991

GORDON, J.A (AG.)

This is an appeal from the judgment of the Resident Magistrate for St. Mary in a suit brought by the appellant against the respondents claiming damages for trespass to goods/chattels. At the end of the submissions we dismissed the appeal with costs fixed at \$250 to the respondents and promised to put our reasons in writing. We do so now.

The appellant worked as Senior Animal Assistant in the parish of St. Mary and was stationed at the Orange River Agricultural Station at Highgate in the said parish. This station is the main station of the Cocoa Industry Board. The station occupies over 240 acres and on it are nurseries, paddocks and a veterinary clinic. Employees at the station were permitted to keep cattle at a section of the station known as Round Hill. The appellant had cattle which he depastured on the station

but not in the area designated. Trespassing animals did damage in nurseries to seedlings and this was a cause for concern. To resolve the matter the management convened a meeting of workers at which said meeting the discussion centered on the damage caused by trespassing animals and in particular a complaint made that animals belonging to the plaintiff trespassed on a section known as field 22 and did damage and were generally a nuisance. The first respondent, the Director of the Cocoa Industry Board, was present at the meeting. An agreement was reached whereby the appellant would refrain from tethering them where they caused damage.

On the 27th June, 1988, Dr. Miller was in his office when he observed two calves trespassing in the nurseries, causing damage to plants therein. The mothers of the calves were tethered nearby. He caused the mothers and the calves to be removed to a paddock used as a pound on the compound. The following day he saw and spoke with the plaintiff who stopped him on the road. He informed the plaintiff he could have his animals back if two conditions were met:-

- (1) "They would be so secured that they would not cause damage to nursery or other property, and
- (2) Because the station was under quarantine accommodation would have to be made to accommodate them on station until quarantine restrictions were lifted."

Quarantine restrictions applied because two bulls had to be destroyed when they were found to be tuberculosed.

Dr. Miller testified that he subsequently gave instructions for the release of the animals. This decision was influenced by a request made by Dr. Logan, a Veterinary Surgeon on the station who requested a meeting between Dr. Miller and

the appellant because the appellant had made no arrangements for accommodation.

The animals were returned to the appellant on 5th July, 1988 and ten days later he sold them. He claimed he sold them "at a price lower than value before Monday, 27th July, 1988" and he brought suit to recover his loss.

In his particulars of special damages he states:-

(a) Loss of condition of dark brown cow ...	\$1,600.00
(b) Loss of condition of light brown cow ..	1,400.00
(c) Loss of condition of heifer calf	400.00
(d) Loss of condition of bull calf	400.00
(e) Valuation fee	200.00

The appellant claimed that the condition of the animals deteriorated while they were impounded as there was but little grass and no water nor provisions for water in the paddocks. He took no steps to feed or water them, he did not instruct the attendant who worked with him not to feed them, but he instructed the attendant not to water them. When the animals were returned to him they were in poor shape and he sold them at a loss hence his claim. Samuel Lindo, the valuator, called by the plaintiff said he valued the loss on each cow at \$400.00 and that on each calf at \$100.00 This gives a total of \$1,000.00. The claim was for \$3,800.00.

The evidence for the defence was that the appellant's cows were a nuisance and did damage to seedlings in the nurseries. The appellant ignored requests to so maintain his animals that they did not cause damage. Other workers similarly placed tethered their animals away from the sensitive areas and impounding was a last resort. The station was an agricultural station and the paddocks were equipped with piped water and containers from which animals drank water. In the paddock where the impounded animals were kept there were two pipes. The animals were fed and watered by Mr. Hubert Taylor daily.

Mr. Carter urged five grounds of appeal. The first ground complained that the learned Resident Magistrate erred in Law in failing to consider and properly evaluate the effect of sections 14, 29, and 32 of the Pound Act.

Section 14 requires the pound keeper to supply every animal in his charge with food and water and to keep a record thereof. Section 29 makes the pound keeper liable for the death or injury of any animal in his charge. Section 32 deals with rescuing an animal distrained and is not relevant to these proceedings.

Mr. Phillip Hannan, a ranger, gave evidence of feeding and tethering the animals on the 27th June, 1988. Evidence was given of a book in the form of an attendance register which was kept at the station. This gave details of the attendance of the subordinate staff and their daily deployment. This book was tendered in evidence but was not available at the conclusion of the trial. Mr. Carter challenged the accuracy of the record and suggested to the witnesses that entries had been falsified. Mr. Carter complained in his second and third grounds of appeal that loss of the book affected the plaintiff's case and this had not been properly evaluated by the Resident Magistrate.

The absence of the book was the subject of submissions by plaintiff and defence and plainly it did not materially affect the case. The learned Resident Magistrate made no findings on this book and the evidence in the record before us supports her conclusions.

The fourth ground of appeal urged that the Resident Magistrate erred in Law in failing to properly evaluate and consider the evidence of Dr. Robert Logan.

Dr. Logan was the veterinary officer attached to the station. He gave evidence of seeing the animals in the paddock.

The gate was locked so he did not enter. He had seen the animals four weeks before and on the occasion he looked at them at the appellant's request, their condition was poor. They were meagre. He said he saw no evidence of grass brought in and no container capable of holding water. He said lack of water would result in weight loss in the animals. He spoke of a meeting with Dr. Miller and said the area of the paddock was approximately four squares. His examination was visual and from outside. Grass was in the paddock but the quality was poor.

The Resident Magistrate found that the cattle were impounded because they trespassed and did damage. She also found that there was a quarantine in place so the animals had to be distrained on the compound. The calves were still nursing so they had to be kept with the mothers. She found that Dr. Logan saw the cattle in the paddock from a distance. The weight loss and value placed on the cattle was an assessment. She also found "on a balance of probabilities the plaintiff has not proven that the defendant committed a trespass to his goods and damages resulted therefrom".

The findings of fact by the learned Resident Magistrate that the animals trespassed and did damage and were as a result impounded was an answer to the appellant's claim in trespass to goods. The Pound Act gives the "occupier of land trespassed on and their respective servants or agents in charge of such land," the power to seize animals trespassing thereon and impound them. For the appellant to succeed in his claim he had to prove that the respondents failed in the discharge of the duties imposed by the Act on the distrainer to supply the animals with food and water: (section 14).

The Resident Magistrate found the evidence of the valuator at best "vague and uncertain, also unreliable. He saw the cattle

in the pasture a Saturday before, he seems uncertain as to which Saturday it was." They were seen at a distance by the valuator. The first respondent said the appellant was not prevented from tending his animals in the pound if he so desired. This would on the appellant's part be in mitigation of his loss, if any.

In addition, the first respondent said that the appellant was informed by him on the day after the animals were distrained that he could have them back on his satisfying two conditions -

- (a) keep them in a secure place
- (b) within the quarantine area.

This evidence of Dr. Miller was unchallenged and there is nothing to suggest that the appellant attempted to comply. Furthermore, the appellant said he did not take any steps to tend the animals himself, he never instructed the health attendant to feed them but ~~said~~ he "I instructed health attendant not to water them". This was evidence of an act on his part to prevent compliance with section 14 of the Pound Act.

In the first ground of appeal Mr. Carter complained that the respondent had failed to observe section 29 of the Pound Act. This section states:-

"Every distrainor shall furnish sufficient and suitable food and water for every animal during its detention, and if any animal detained or impounded under this Act dies or sustains damage for want of sufficient or suitable food or water, or for want of care or good treatment by the distrainor or pound keeper, such distrainor or the Parish Council employing such pound keeper shall be liable for the value of the animal or for the value of the damage sustained thereby:

Provided that such distrainor or pound keeper shall not be liable for the death or injury of such animals unless it is proved that such animal died or was injured by or through his wilful act or neglect."

Faced with the proviso to this section Mr. Carter was unable to point to any wilful act or neglect on the part of the respondents. On the evidence the wilful act of the appellant was his instruction given to the health attendant "not to water" the animals. The decision of the Resident Magistrate was eminently correct.

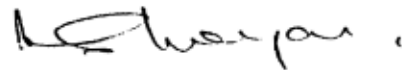
WRIGHT, J.A

I agree.

Handwritten signature of J.A. Wright in cursive script.

MORGAN, J.A

I agree.

Handwritten signature of J.A. Morgan in cursive script.