IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 072 of 1978

BETWEEN LLOYD CEPHAS PLAINTIFF

A N D AGRICULTURAL DEVELOPMENT CORPORATION DEFENDANT

Karl Von Cork and Michael Williams instructed by Karl Von Cork and Company for plaintiff.

Derek Jones of Myers, Fletcher & Gordon for defendant.

Heard: 21st, 22nd, 23rd, 28th September, 1981

Judgment

Morgan J:

The plaintiff sues in detinue for the wrongful holding of his cattle by the defendant and for the return of $1,000.00 which he paid to the defendant for their release.

It may be helpful to set out at this stage, relevant parts of the pleadings.

The plaintiff pleaded in his Statement of Claim that the defendant company which operates a farm at Amity Hall in St. Catherine wrongfully detained fifty head of cattle the property of the plaintiff at their farm on the 10th March, 1978, that in breach of Section 8 of the Pound Act they failed to convey the cattle to the Pound; that despite several requests and a letter of demand dated 18th March, 1978 they failed or refused to deliver them and demanded $1,000.00; that the plaintiff paid the said sum in two instalments under protest and the animals were delivered on the 28th March, 1978. They claimed loss and damages particularized at $1,300.00 and further the return of the sum ($1,000.00) paid under protest.

The defendant in its Defence and Counter Claim state in part that the farm was declared an infected place on the 2nd November, 1977 under Section 5 of the

Animals (Disease and Importation) Act and that on the 10th March, 1978 ninety-six head of cattle trespassed on the property through a fence that was destroyed. The defendant therefore kept the cattle to be tested under the Bovine Tuberculosis Eradication Regulations 1938 made pursuant to the Animals (Disease and Importation) Act; that the cattle were tested on 13th March and authority to release the cattle was given on the 16th March, 1978 by an Inspector; that the defendant was advised to redeem his cattle and to pay the cost of their keep and care. On 19th March, 1978 he paid $300.00 and after much discussion the balance was reduced to $700.00 which he paid on the 28th March, 1978 and he then removed the remaining animals. They denied he was entitled to any relief.

By way of Counter Claim they claimed $7,830.00 for sorghum destroyed in their field and $96.37 for repairs to the fence.

The plaintiff by his reply joined issue and averred that the farm had not been declared an infected place, that his cattle was enclosed in good and sufficient fences; that the cause of their escape was something beyond his control, that the defendant did not within forty-eight hours of the discovery give notice to the plaintiff of any damage in breach of Section 12 of the Trespass Act and that the defendant suffered no damage.

The plaintiff gave evidence and was supported by one witness. He said that fifty head of his cattle strayed from his property at Amity Hall to the defendant's property which adjoins his property. The common fence was at all times maintained by him but was cut by someone unknown and apparently by persons who wished to use both properties as a "short cut" to Bushy Park. It was on March 10, 1978 that he missed them and thereafter he made a diligent search of the surrounding areas and the Pound at Spanish Town without any result. On the 13th he received some information and went to Amity Hall where he saw his fifty cows in a pen, among

a herd of approximately one hundred cows. As the "Busha" was not there he returned on the 14th and was told he had to pay $1,000.00 to recover his cows. He consulted his lawyers and armed with a letter of demand from them (Ex. 1) he returned for his cattle, but upon the "Busha's" refusal to release them, he paid $300.00 and collected some of the animals which were in bad condition. He returned to his lawyer who gave him an "under protest" letter which he took to the farm, paid $700.00 and finally received the remainder of his cattle on the 29th. He was neither told of any damage to crops, in respect of which the defendant now makes a claim until he received his receipt nor did he know they were being held for tests. It was only on the occasion when he paid the $700.00 on the 29th, that he was told by a worker of his belief that those cows were tested. The fence between them he said was at all times maintained by him and was frequently cut by persons who used the properties as a "short cut" to reach Bushy Park. The animals had lost weight and their condition had deteriorated, the cost for their keep was exorbitant. In respect to the defendants claim for loss of sorghum he said that the sorghum yeild was not good and the cultivation of it had ceased prior to the entry of his cattle. Mr. Alfred Mullings who was employed to the defendant as Director of Crops up to September of that year gave evidence. He said that on receipt of the letter (Ex.1) he checked his crops at Amity Hall and found no damage. He acknowledged that the sorghum cultivation had been transferred to the Livestock Division while the Crop Division of which he was Director was concerned with rice fields only. He said that the pastures were properly fenced but the perimeter fence though intact was not in a good state of repair.

The case for the defendant came from the mouth of four witnesses.

Dr. Dryden Evans, a Doctor of Veterinary Medicine attached to the

Ministry of Agriculture and stationed in St. Catherine gave evidence that as an Inspector appointed under the Animals (Disease and Importation) Act he carried out tests in 1977 at Anity Hall Farm and found the animals reacting to tuberculosis. As a result he issued a notice declaring the farm an infected place. In March 1978 he got some information from the Farm Manager, went there, saw a group of animals and was told that they had strayed on the property. Because of the notice which he had issued, the animals would have to be tested and proved negative before they could be removed from the farm. On the 13th he carried out the test and took some blood samples to the laboratory. The test required seventy-two hours to show a positive or negative reaction which would be indicated by a swelling at the site. He returned on the 16th and inspected them and they showed negative. After leaving the farm he was informed by the laboratory, by radio, that the blood samples were negative whereupon he gave instructions to Anity Hall that the animals were free to leave.

Mr. George Wilson the Production Manager of Anity Hall farm spoke of the visit of Dr. Evans and his tests. He said the plaintiff came to him on the 13th about the animals and he told him that they were caught on the farm in the sorghum plot and before delivery he had to have them checked since the farm was under quarantine. On the 16th the plaintiff returned and was told that there was a charge of $20.00 per head per day for "keep and care." On the 20th he returned to the farm when the plaintiff came to collect his receipt for $300 which he had paid for some of the animals he had taken away. The charge for the calves had by then been reduced to $10.00 per head per day. Plaintiff brought the letter of demand dated 18th March, 1977. They had a discussion on the matter of cost and plaintiff left to give it further thought. On the 27th he returned and after some deductions by him and further discussions with the plaintiff he was told

to bring $700.00. This he did on the 28th and received the animals. The witness received no other letter. He gave details of how he arrived at $20.00 per head for the animals which he said were well cared and were all redeemed by their owners and said that he repaired the fence at a cost of $96.37. The sorghum scheme he said was an experiment with a projection to plant eventually three hundred and sixty acres. In March, two hundred and eighty-five acres were already planted and reaping was done. He gave details of the planting and denied that only sixty acres in all were planted which at the time of the trespass were already reaped. He denied there was any short-cut from Bushy Park to Amity Hall and said that the fenceswere well kept by eight to twelve regularly employed fencemen.

The Secretary of the defendant's company, Mr. Forrest, said that Amity Hall farm was a breeding station for crops and cattle. In cross-examination he admitted that the defendant's company held monthly Board Meetings at which "Production Reports" prepared by him were tabled and discussed. These are progress reports which contain the stage of the various activities being undertaken by the several farms. On request he produced the Reports for July to October 1977, and December 1977 to March 1978 showing the report on the sorghum project on Amity Hall farm.

The last witness was Mr. Noel Harris who gave evidence of inspecting the sorghum field and observing three-quarter of it trampled by cows. He says he saw the fence cut and ten pieces of coconut bunkers placed alongside each other across the drain between plaintiff's and defendant's property.

As far as the evidence as narrated by these witnesses is concerned it was not disputed and I find as a fact that :

(a) Plaintiff and defendant own contiguous properties on which each keeps

cattle.

(b) Plaintiff's cattle were found on defendant's land on 10th March, 1978, when the defendant detained forty-eight head along with cattle, the property of other persons.

(c) The cattle were not taken to the Pound but kept in a pen on defendant's property.

(d) The plaintiff presented to the defendant a letter of demand dated 18th March, 1978, but the defendant refused to act on it.

(e) The defendant finally agreed that payment of $1,000.00 should be made before the cattle would be released.

(f) The plaintiff paid $300.00 as per receipt dated 20th January, 1978 (sic) Exhibit 3 for one lot and thereafter $700.00 as per receipt dated 28th March, 1978 on which date the remainder of his cattle were released.

The issues to which I will direct my mind as the main matters in dispute are:

(1) Whether or not the property was declared an infected place and placed under quarantine under the provisions of Section 5 of the Animals (Disease and Importation) Act.

(2) Whether or not the defendant failed to comply with Section 8 of the Pound Act and Section 12 of the Trespass Act and the effect of non-compliance if any in the circumstances.

(3) Whether or not the plaintiff has satisfied the requirements of Section 14 of the Trespass Act to avail himself of the proviso therein.

I find as follows:

Dr. Evans a doctor of veterinary medicine who was appointed on the 9th September, 1976 by the Governor General as an "Inspector" for the purposes of the Animals (Disease and Importation) Act under Section 3 signed a notice by virtue of Section 5(1) of the Act on the 2nd November, 1977 declaring Amity Hall Farm an infected place. The Minister has not complied with Section 5(4) (a) which declares that he "shall" upon receipt of the notice, if satisfied, by order declare the area specified in the notice an infected place. Section 5(2) however reads that once the Inspector has made his declaration by notice the place "shall be an infected place subject to confirmation or otherwise by the Minister." The Minister has made no confirmation.

Section 5(4) (b) gives the Minister the power also if not satisfied to revoke the notice. The Minister has not confirmed and it is true he has not revoked. The result in my judgment is that Section 5(2) nonetheless operates and I hold that the notice of the Inspector declaring Amity Hall an infected place is a good, proper and continuing notice.

In my view Section 5(3) directs the Inspector to send a copy of the notice to the Minister. The evidence is that it was served on the Secretary of the defendant's Corporation, a Statutory Body set up by Government. Dr. Evans is a government servant attached to the Ministry of Agriculture and he kept the copy. The defendant and the Inspector it is clear operate on a department to department basis and service on the Secretary I find is sufficient to comply with service on the Minister.

If I am wrong in that conclusion I would hold that the section is procedural and a failure to hand the notice to the Minister directly does not alter the validity of the Inspector's order.

It was on the basis of this notice headed "Official Quarantine" that the defendant rounded up approximately one hundred head of cattle trespassing on its farm on the 10th March, 1978 herded them in a pen, notified the Inspector and kept them to be tested by him before delivery.

The plaintiff argued that the animals should have been sent to the Pound and rests his argument on the mandatory terms of the Pound Act.

Section 8 of the Pound Act imposes a duty on the owner of land who distrains cattle to take it with

> "all reasonable dispatch and in all cases within a period of twenty-four hours convey the same to the nearest Pound."

This was not done. It was argued that the defendant had breached a duty imposed

on them and, presumably was therefore not entitled to payment of any sums.

Mr. Jones for defendant cited two authorities which were not directly in point and I hope I do no injustice to his industry if I approach the matter in this way:-

The animals were caught on the 10th March, 1978. No evidence came from the plaintiff as to the last date prior to the 10th on which he had seen his animals on his property. There is therefore an absence of evidence as to how long they were in the quarantined area that is, how long they were in contact with contaminated matter is unknown. Section 20(h) of the Animals (Disease and Importation) Act makes it an offence for any person without lawful authority or excuse to take or move any animal out of an infected place or area otherwise than in accordance with the Act, that is, after receiving a permit from the Inspector. In my view it needs no authority only common sense and common understanding to conclude that it would not only be imprudent and fool-hardy but illegal to deliver these animals to their owners or to the Pound in a situation where the chances were that they or some of them may have become infected while in the quarantine area and would thereby be in a position to transmit their newly acquired infection to other animals. The defendant in my view acted reasonably and properly in not taking the animals to the Pound and such action is not one which would disallow the defendant's entitlement to payment.

It was contended that the animals should have been taken to the Pound after the tests were completed and the defendant had received permission and clearance of the Inspector. The evidence, however, discloses that by the time they were so cleared and ready for the Pound the owner had been identified, had come to see his animals and was negotiating albeit hesitantly for their delivery. It is my view that there was no necessity at this stage to transport the animals to the Pound, conduct which would serve only to increase the plaintiff's expenses.

The plaintiff is the owner of 14 1/4 acres of land at Amity Hall. The defendant owns approximately 3,000 acres. The plaintiff says there is a fence consisting of six strands, with height 4½ - 5 ft of barbed wire. He does not say he erected it but he says that they are adequate and at all times he repairs the fence on his side as it is frequently cut by persons. Mr. Mullings, former Director of Crops; admitted the land was fenced, but not by good fencing - that with the exception of the pastures the fencing in the other areas was poor. The plaintiff says he never checked the fence regularly and at another stage in cross-examination admitted that he did not visit his farm often. It is the duty of the owner of stock to enclose them with good and sufficient fences and if the plaintiff is not often at his farm I see great difficulty in his maintaining his fences regularly, if at all. I find there is no sufficient evidence to make the provisions of Section 14 of the Trespass Act available to him as there is none from which the Court could draw any inference that he adopted any reasonable precautions notwithstanding which the cattle escaped through some cause beyond his control so that he could not reasonably have provided against such escape. In the event I find that there was a trespass. The plaintiff paid $300.00 and then $700.00 for the release of the animals. There is dispute as to whether or not a letter from his lawyers dated 23rd March, 1978 indicating that payments were being made "under protest" was received by the defendant. Mr. Wilson the Production Manager received one letter of demand which he sent to his Head Office. He says he did not receive any other letter. There is no reason to believe that any other correspondence on the matter if delivered to him would not have been similarly treated. I find he did not receive the letter. In any event it is clear that the plaintiff had sought legal advice and had shown strong reluctance to paying any moneys. He said he told Mr. Wilson that he was paying the money only in order that his cows could be released

a statement I find consistent with his handling of the matter. I find it is clear he was paying the money "Under Protest."

Having already found that there was a trespass this result is of little benefit except in considering whether or not the amount paid was reasonable. Mr. Wilson the Production Manager quoted the daily rate per head of cattle as he computed it to be as follows:-

Grass and water	$1.05
8 lbs. concentrate feed @ 10¢	.80
Herdsmen and Security	1.00
Total	$2.85

For a week (7 days) = $19.95 rounded @ $20.00. Plaintiff was after allowed to take the claves at half price at $10.00 each. By the 19th the owners of the others had redeemed their cows and what remained belonged only to the plaintiff. The plaintiff now had to bear the full cost of the herdsmen and security. By the 27th when he was ready to take his animals the bill was $2,330.00 total. The defendant no doubt anxious to get rid of the animals decided to halve the bill. It was now $1,165.00. The plaintiff baulked. The Production Manager remitted $165.00 settling for a total of $1,000.00. He collected the remaining $700.00 from the plaintiff. On these facts I find that the plaintiff had gotten more than a bargain, for the delay in returning the animals for which delay extra costs were incurred was due to no fault of the defendant but to the plaintiff's protests and it is clear that the defendant did all it could in assisting the plaintiff to redeemed his animals by substantially reducing the sum.

To sum up, I find that the defendant's farm was a lawfully declared quarantined property on which the plaintiff's animals trespassed; that it was proper for the defendant to have held the trespassing animals for the Inspector

to have tested them for infestation and that the plaintiff was liable for any reasonable cost that followed as a result.

The defendant has counter claimed for trespass and damage as follows:-

(1)	58 tons of sorghum destroyed @ $135.00 per ton	$7,830.00
(2)	Repair to fencing	96.37

The proviso of Section 12 of the Trespass Act (cattle trespass) provides that within forty-eight hours of the discovery of the damage notice of the nature of the damage should be conveyed to the owner of the cattle. This was not done. The evidence discloses that the defendant was not aware who were the owners of the animals until the fourth day. Mr. Wilson says he told plaintiff there was damage on the 13th when he saw him. This the plaintiff has denied. He was however aware of it on the 20th as it was shown on the receipt as "crops" and from his own mouth the evidence came

> "I never ask them what crop they damage. They said it was sorghum that they reap and it had a second spring. Someone explain that to me. I ask because I see it on the receipt that crops damage."

The authorities are quite clear that notice need not be formal, that any communication which conveys to the trespasser the nature of the injury is sufficient. To any farmer who receives a notice of cattle trespass there is a contemporaneous thought of damage and it seems to me unlikely that complete silence was maintained in that area as alleged. The plaintiff occupies adjoinging land and knows that the defendant has crops planted on his farm. It is in my view a natural thing that he would have been concerned about damage to crops. It is a good argument that in the computation of the charges before the Court the amount for 'crops' was not included inasmuch as the receipt bears that item. But there is an answer to this to which I shall shortly advert.

I find on a balance of probabilities that the plaintiff was told that his

cows were found in the sorghum field and find also that the failure of the defendant to advise him within the statutory period of forty-eight hours has been satisfactorily accounted for.

Now as to the first item of special damage. Mr. Wilson the Production Manager gave evidence that sorghum had been planted on the property as follows - July - 60 acres; August - 60 acres; September - 75 acres; October - 90 acres. A total of 285 acres. The evidence is that it takes four to five months before reaping time. On a rough calculation there should be sorghum for reaping between November through to February or December through to March.

The Secretary of the defendant's company, Mr. Forrest produced the monthly reports for the period July 1977 through to March 1978 - the relevant periods. These reports headed "Development - Production Plan Report" are compiled from information sent from the respective farms controlled by the defendant for use at the monthly Board Meetings where the entire progress of the Production Development is looked at for important decisions to be made in the field of Agriculture. It was most revealing.

The reports for the Amity Hall farm sorghum scheme show the following:- July sixty acres sown. August repeats the sixty acres plus thrity acres in advanced stage of preparation and ninety in initial stages. In September there is a total of seventy-five acres sown fifteen acres in advanced stage and ninety still in initial stage. October, fifty of the seventy-five acres were being reaped. No report was tendered for November. In December the report shows a total of sixty acres sown and not seventy-five. Of this sixty acres fifty acres had been reaped and ten acres suffered from poor germination. The expected tonnage had not been realized because of cattle trespassing. January the report is repeated - sixty sown, fifty reaped, ten poor germination. February and March the same report is

repeated. Mr. Forrest was unable to give any sufficient explanation to the Court as to the static state of the sorghum development on his report. He would only say no report had come in for fully four months and no apparent action taken by him to procure it. Two factors are worth mentioning.

One is that Amity Hall farm is in the parish of St. Catherine which adjoins the parishes of Kingston and St. Andrew where the defendant's Head Office is situated. The other is a fact which was urged on this Court that Amity Hall farm is important to the Agricultural Development Corporation and the development of (cattle) and crops in Jamaica. The totality of the report is that sixty acres in all were planted in July to September of which fifty acres were reaped and ten acres suffered. Mr. Wilson says two hundred and eighty-five acres were sown but there is no information sent to Head Office for this very important Production Plan which the Board depends upon to see how the experiments are progressing in this important aspect of development in Jamaica - Agriculture. I can hardly bring myself to believe that the Production Manager had been doing such a wonderful job at Amity Hall farm and yet failed to tell the Board about it.

Mr. Mullings, the Director of Crops, whose business is with rice and not sorghum says he knew of the sorghum planting. Because of the poor yield the scheme was abandoned and no sorghum was there in March.

The other information on this important aspect of development comes from the plaintiff who says that a worker told him that it was some ratoon sorghum they had in the field which the cows had trampled. This I find easier to believe. It bears closer resemblance to the truth and is consistent with the report, that is, that it was ratoon from the fifty acres which they had commenced reaping in October. This I find accounts for the fact that the word "crops" was written on the receipt but was never at the time of writing valued or any charge made. To put it simply the sorghum was

ratoon and the state and quantity of it was so negligible that it was not worth being valued.

In this very confused state of the evidence as advanced by the defendant no award is made for this item.

As to the repair of the fences there are certain inescapable facts. The plaintiff's evidence is that he saw the fence through which the cows came, not rot, not broken but cut. He says also that people cut the fence in order to walk through both properties as a "short cut". The defendant denies this and says that there is a property road there and so there is no necessity for a "short cut". Now six strands of wire were cut. The plaintiff says that for a person to come through, one strand of wire only needs to be cut but for cows it needs a minimum of four strands from the top to be cut "as the cows will walk over the bottom ones." It is obvious and he agrees that it was cut for the purpose of cows to come through. In addition to this Mr. Harris the defendant's witness who visited the scene says that eight to ten pieces of coconut bunkers, that is, the trunk of the trees, were stretched close, side by side across the drain which divides the properties by the fence on the defendant's side. In my view for persons to cross as a short cut one or two bunkers would be sufficient. I find they were put there to accommodate cows. The plaintiff admitted that he does not have enough grass for the cows on his land. I find that he alone had an advantage to gain from the open fence for his cows could come from his farm to Amity Hall farm as the defendant's cows were kept in pastures and therefore could not get on his land. It was clearly a one way traffic for his cattle and those of others whom he accommodated as the farm which adjoins defendant's farm on this side belongs to the plaintiff only.

I find there is an abundance of evidence for me to conclude on a balance of probabilities that the responsibility of the cut fence was the plaintiff's doing.

The cost of repair has not been challenged. I award it.

There will be judgment for the defendant on the clain and counter clain for $96.37 with costs to be taxed or agreed.

M. Morgan
Judge