

NMLS

JAMAICA

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S CIVIL APPEAL NO: 23/92

COR: THE HON. MR. JUSTICE CAREY, J.A.
THE HON. MR. JUSTICE DOWNER, J.A.
THE HON. MR. JUSTICE PATTERSON, J.A. (AG.)

BETWEEN	HARRY CHUNG	PLAINTIFF/APPELLANT
AND	LESLIE FAGAN	DEFENDANT/RESPONDENT

Jack Hines for Appellant

Respondent not represented

8th February, 1993

CAREY, J.A.

This is an appeal against a judgment of Her Honour Mrs. S. Cole-Smith sitting in the Resident Magistrate's Court for the parish of Manchester in Mandeville on the 6th of March 1992 whereby she entered judgment on behalf of the plaintiff in the sum of \$4,500 with costs to be taxed or agreed.

By his action, the plaintiff claimed the defendant to recover the sum of \$10,000 for damages to cultivation "for that on the 14th day of November 1989 the defendant and his servants and or agents unlawfully entered the plaintiff's cultivation at 2 Newleigh Close, Mandeville in the parish of Manchester and used a bulldozer to demolish the plaintiff's corp." There then followed particularisation of the crops destroyed totalling the grand sum of \$10,900. In order to bring the matter within the jurisdiction of the Resident Magistrate's Court, the excess of \$900 was abandoned.

When the matter came on for hearing before the learned Resident Magistrate, as is required by the Judicature (Resident Magistrate's Court) Act, the defence was stated in these terms -

"Defendant denies having unlawfully entered and destroyed any cultivation of the plaintiff. Worked conducted at Newleigh Close was done by an independent contractor." I must say at once that this defence was somewhat difficult to appreciate and at that point the Resident Magistrate ought to have required counsel for the defendant to be more specific as to what was the nature of the defence. Howsoever that might be, what the evidence disclosed was that the plaintiff had obtained the permission of the defendant to farm land from as far back as 1975. That was entirely an oral agreement. The plaintiff's cultivation was some four or five chains from where the defendant lives. Sometime in November 1989, the plaintiff went to his cultivation, some four or five chains from where the defendant lives. Sometime in November 1989, the plaintiff went to his cultivation to discover that it had been ploughed up. He made enquiries. He went to the police station, to the agricultural office at Caledonia Road and then he attended upon Mr. Chung at his shop and the following conversation took place: He said he asked him what happened at Newleigh Road. Mr. Chung said he did not know; he sent a man to bulldoze the land and he don't response for anything. Fagan said to him "you have anything more to say to me" whereupon Chung replied "I don't response for your ground because you are squatter on the land." Fagan then said to him "after you gave me to work you destroyed every drop of my cultivation and don't let me know. Chung ended by saying, "he don't obligate to me and I must get out of his place." The plaintiff subsequently found that all his plantains, yams, sweet cassava, sweet potatoes, pumpkins and cane were destroyed.

So far as the defendant's case was, it was that he had not given the plaintiff permission to cultivate the land. He said he had given a Mr. Moseley permission to plant a bit of

the land adjoining his lot but he had given no one else permission to do so. Mr. Moseley was called to give evidence on behalf of the defendant and he gave evidence which so far as relevant, was to the effect that where Mr. Chung lives, if any food crops were planted on the strip which the plaintiff had then Mr. Chung must have seen it.

Having regard to the evidence which was given, the real issue was not whether the person who bulldozed the land was a servant or agent of the defendant or an independent contractor, because plainly on the evidence, he was an agent having been sent there by the defendant. The issue really was whether permission to cultivate the land had in fact been given. Indeed, it appears to me that the defendant could not escape liability even had he not given the permission. Because, assuming for the moment that the plaintiff was a squatter, then having cultivated the land for such an appreciable length of time, it seems to me that he was entitled to some notice in order to get his crops off the land and the defendant would not be entitled to send in a bulldozer to do the extensive damage that was in fact done.

Howsoever that might be, the issue of permission was what the learned Resident Magistrate properly addressed her mind to and in that, she came to the conclusion that permission had in fact been given. She found it difficult to envisage, having regard to all the circumstances of the case, that permission could not have been granted. She took into consideration and this is quite plain, that the land which was being cultivated by the plaintiff was quite close to where the defendant lived. That he had given permission to another man, Inspector Moseley whose land adjoins the property of the defendant and that having

regard to the length of time, the nature of the cultivation, the proximity to the defendant's own home, that on a balance of probability, she could not accept that the defendant was unaware of the presence of the plaintiff on his land over such an appreciable length of time. She puts it in these words:

"The Plaintiff has told this Court that he has been farming there since 1975 with permission from the defendant. I accept this also because it could be unthinkable for the defendant to have tolerated occupancy of this land for so long a period without giving permission."

She had previously stated in her reasons:

"In this action I accept the evidence of Inspector Moseley that he had been given permission to farm on the defendant's land. The plaintiff who is neighbour enjoyed similar permission."

Mr. Hines succinctly and with economy had endeavoured to show that the learned Resident Magistrate in her reasons, did not properly apply her mind to the evidence which was adduced before her. So far as he was concerned, she did not balance the case for the plaintiff against that of the defendant. In my view, those complaints are not warranted on the facts and as we have demonstrated by reference to her reasons, it was plain that the learned Resident Magistrate applied her mind to the real issue for determination, and came to a conclusion which is eminently warranted on the facts. There was some faint endeavour by Mr. Hines to argue that there was no basis for the amount of damages awarded. I cannot agree. The plaintiff gave evidence of the extent of the damage and that was not challenged in any real particular by the defence. The appeal is dismissed with no order as to costs.

DOWNER, J.A.

I agree.

GORDON, J.A.

I agree.