

IN THE COURT OF APPEAL

RESIDENT MAGISTRATE'S COURT CIVIL APPEAL No.3 of 1977

BEFORE: The Hon. Mr. Justice Zacca, J.A.(Presiding).  
The Hon. Mr. Justice Henry, J.A.  
The Hon. Mr. Justice Robotham, J.A.(Ag.).

BERNETTA HARZE - Plaintiff/Appellant

v.

CONROY JENKINS - Defendant/Respondent

Mr. R. King for the appellant.

The respondent was not present and was not represented.

February 4 and 11, 1977

ROBOTHAM, J.A.(Ag.):

The plaintiff/appellant in this case brought an action in the Resident Magistrate's Court for St. James against the defendant/respondent claiming the sum of two hundred dollars as damages for his having trespassed upon her premises at Caanan in St. James on the 8th day of December, 1975.

Briefly, the facts are that on the 8th day of December, 1975, the respondent went on the appellant's land and into her house, for the purpose of demanding the return of a lock, which his stepmother had loaned her. There is no direct evidence that the stepmother had the respondent's authority to loan out his lock, but it is reasonable to come to the conclusion that she did not because the respondent in his evidence said that on the said 8th day of December he sent his sister to her for the lock, and she refused to return it, hence his having gone himself to demand its return.

The appellant refused to give up the lock and flew into a rage telling the respondent "I am not giving it to you, so call the Police". The appellant well knew that the lock was the property of the respondent, and upon her refusing to give it up, the respondent took up a radio "with the intention of making her give up the lock." The appellant alleged that the respondent held her in her chest when she tried to recover her radio, and said to her "Auntie don't let me handle you rough". The Resident Magistrate rejected the appellant's version on this, and preferred

the respondent's version which was that both held on to the radio, and were pulling for it. Whilst this was going on two men called to the respondent from next door, and he released his hold on the radio and left the yard.

The Resident Magistrate gave judgment for the defendant and on appeal it was argued before us that he erred in law in holding that the respondent had entered the appellant's premises with lawful justification, or alternatively, that he erred in law in refraining from applying the principle of trespass ab initio.

It was argued on behalf of the appellant that the entry of the respondent on to the appellant's land for the purpose of recaption of his goods could only be justified if such goods had been taken and put there by the wrongful act of the appellant herself and that was not the case here. Undoubtedly in such cases such a right is recognized. Even assuming, however, that he had a legal right of entry (which was denied) his action in taking up the radio was an act of positive misfeasance, thereby making him a trespasser ab initio. He relied on statements appearing at paragraphs 1338 and 1339 of the fourteenth edition of Clerk and Lindsell on Torts at pages 774-775, under the heading "Justification for trespass" (to land). This doctrine has been described as "antiquarian" by the learned author in paragraph 1339, but it is still maintainable in certain circumstances. However, even allowing that the doctrine is still applicable, we cannot hold that merely taking up the appellant's radio would be a sufficient act of misconduct relating back so as to make his original entry tortious.

The only question left to be decided is was the respondent's entry on the land justifiable. It is also a defence to an action for trespass that reasonable force was used to retake chattels which were being wrongfully withheld from the person entitled to possession, even though the original taking or obtaining may have been lawful. (See Street on Torts (4th edition) page 83 - "Recaption of Chattels").

Every attempt to retake chattels must involve an entry on the land where such chattels may be. The respondent in this case was the person entitled to immediate possession of the lock, and appellant's

refusals first, when the respondent sent his sister for it, and secondly, when he himself went for it and was met with a blunt refusal, were denials of his title and made her liable to him in detinue. (See *Blades v. Higgs* 142 E.R. p.634). In those circumstances we are in agreement with the Resident Magistrate that the entry of the respondent on to the appellant's land to recover his lock which as against him, was wrongfully in the possession of the appellant, was justifiable in law. The appeal is accordingly dismissed.