1941 — 1945

THE

JAMAICA LAW REPORTS

(4 J.L.R.)

DECISIONS

OF

THE HIGH COURT

AND OF

THE COURT OF APPEAL

PUBLISHED BY THE AUTHORITY OF THE SUPREME COURT
OF JUDICATURE OF JAMAICA

Editor and Reporter:
W. S. K. GORDON, Solicitor

PRINTED BY
THE GOVERNMENT PRINTER,
DUKE STREET, KINGSTON.

1950

1940-1941.

THE

JAMAICA LAW REPORTS.

[4 J.L.R.]

LEE v. BROWN.

COURT OF APPEAL.

1940.
Dec. 5, 6

1941.
Jan. 2.

2 C.A.J.B. 182.

Trespass—Vendor and purchaser—Purchaser let into possession pending payment of purchase money—Non-payment—Re-taking of possession by Vendor.

(1) In the absence of special agreement a purchaser let into possession before completion becomes a tenant at will of the vendor by virtue of being so let into possession—not by virtue of the agreement to purchase:

Nixon v. Richards (1922) Clark 95, applied.

Gray v. Stanion (1868), 5 L.T. Ex. 255, applied.

(2) Until payment of the purchase money and/or completion of the purchase any acts done by the vendor inconsistent with the tenancy at will determines it, and no action for trespass will lie against the vendor for such acts:

Lysaght v. Edwards (1876), 2 Ch. 506, considered.

Turner v. Doe. d. Bennett (1842) 9 M. & W., 643, applied.

APPEAL from judgment of *Hunter*, R.M. Clarendon, awarding the plaintiff-respondent damages for trespass.

Appeal allowed.

Smith, K.C. for defendant-appellant.

Manley, K.C. for plaintiff-respondent.

Cur adv. vult.

1941, JAN. 2: The following judgment of the Court:

(Sir Robert Furness, C.J.; Sherlock, J.A.; and Savary, J.) written by the Chief Justice, was read by Sherlock, J.A.

SHERLOCK, J.A.: I have been asked to read the following judgment of the Court written by Furness, C.J.

This action was brought by the plaintiff-respondent for £2 damages for trespass for that the defendant-appellant had broken into the plaintiff's close at Smithville on the 12th June, 1939, and cut four bunches of bananas.

On the case coming on for hearing the Resident Magistrate called on the defendant to state his defence as required by s. 189 of Cap. 432, and the following note was made:

" 'Plaintiff failed to complete purchase of premises. There was agreement of 9th December, 1937. It was a term of the agreement that if the Plaintiff did not pay the balance of £49 promptly on date when same became fully due, the said Mr. and Mrs. Cyril Lee (Plaintiff and his wife) were to forfeit their claim to the said property.

Up to date this not completed, and Defendant retook possession. If act of trespass £2 is fair damage. Submitted on terms of contract that this was end of matter, and Defendant was entitled to retake possession and did so.'

Plaintiff denies this:—

'Defendant refused to sign conveyance on 14th March, 1938.'

Agreement put in by consent and marked C.L.1. Mr. Clarke (defendant's solicitor) does not agree that words Reginald Brown were on agreement. He admits that Plaintiff was put in possession at time of agreement by Defendant. Defendant's contention is, I resume possession on 9th March, 1938, and am now in possession, and was in possession on 12th June, 1939. I did matters complained of on 12th June, 1939.

Letter of 16th April, 1938, from Defendant to Plaintiff is admitted.

Court rules onus on defendant. Mr. Clarke admits that it was duty of vendor to prepare title and present it to purchaser and that defendant did not prepare title or present one to Plaintiff. He agrees this is position in Jamaica but says that onus was not on him and plaintiff should begin. Court again rules that onus is on defendant."

The letter dated the 16th April, 1938, was not put in, but it is to be gathered from other letters that on or about the 16th April, the defendant was unwilling to complete the purchase for reasons other than the failure of the plaintiff to pay the purchase money.

The parties to the so-called agreement dated the 9th December, 1937, were the plaintiff and his wife and the defendant and his wife, and, to carry the agreement into effect, a draft conveyance was prepared whereby in consideration of £60 expressed to be paid to the defendant's wife, the defendant and his wife were to convey the property concerned to the plaintiff and his wife as joint tenants.

In accordance with the ruling of the Resident Magistrate that he must begin, the defendant gave evidence. He said the land was his; that it was he who agreed to sell it and that he put the plaintiff in possession of it; that on the 9th March, 1939, he resumed possession because, on his calling upon the plaintiff for payment of the balance of the purchase money, the plaintiff refused to pay and said he had bought the land from the defendant's wife. The defendant continued: "I went on the land and picked cocoanuts and breadfruit. I went there often afterwards. I have been continually using parts of the land ever since. I have cleaned up parts of it. I cut bananas and breadfruit and bananas again. Acts in June, 1939, were part of this. I have picked bananas often. Plaintiff never stopped using the land and cultivating it." Corroborative evidence was given and then the following note appears: "Court notes request to call Leanorah Brown who is not present but says that it will assume that she will support Defendant's case to the full, and so she need not be called."

This closed the case for the defendant, and the plaintiff's solicitor thereupon submitted that there was no case for him to answer and that he was entitled to judgment. After hearing argument, the Resident Magistrate gave judgment for the plaintiff for the amount claimed.

Presumably what the plaintiff really wants is a conveyance to himself and his wife of the property concerned. However, he elected to bring an action for trespass and the action has been fought as though the plaintiff and defendant alone, and not their wives as well, were interested. Consequently, we must deal with it on that footing. In the absence of special agreement a purchaser let into possession before completion becomes a tenant at will of the vendor (*Nixon v. Richards* (1922) Clark, 95) and he becomes a tenant at will by virtue of being so let into possession,—not by virtue of the agreement to purchase (*Doe d. Gray v. Stanion* (1836) 5 L.J. Ex. at p. 255). Consequently the plaintiff became tenant at will of the defendant but he had no right to retain possession against the will of the defendant until he had paid his purchase money; this is so despite the equitable interest which a purchaser acquires upon a contract of sale being entered into (*Lysaght v. Edwards* (1876) 2 Ch. at p. 506). It is not in dispute that the defendant entered on the land bought by the plaintiff on the 9th March, and that he continued to enter upon the land and exercise acts of ownership up to the date of the alleged trespass. Maybe the defendant's object was to avoid performance of the arrangement to sell the land, but while the intent of an entry is in many cases important, in the case of a tenancy at will, whatever be the intent of the landlord, if he do any act upon the land, for which he would otherwise be liable to an action for trespass at the suit of the tenant, such act is a determination of the will. (*Turner v. Doe d. Bennett* (1842) 9 M. & W. 643.) So, in this case, the plaintiff's tenancy was clearly determined on the 9th March. Thereafter the plaintiff would seem to have been a mere trespasser. At most he was a tenant by sufferance but the acts of his landlord,—the acts of which he complains,—are inconsistent with any tenancy. It follows that no action for trespass lies and that the appeal must be allowed. There will be judgment for the defendant with costs in the Court below and costs of the appeal which are fixed at £10 10/-.

Solicitor for appellant: *E. C. Clarke.*

Solicitors for respondent: *McGregor and Williams.*

HIGH COURT. (In Chambers) 1940.

Dec. 20. 1941.

Jan. 9.

REX ats ROSS LIVINGSTON v. RICKERBY.

13 S.C.J.B.

Appeal—Venue—R.M. sitting as such in R.M.'s Court—Summary jurisdiction—The Resident Magistrate's Law (Cap. 432) s. 296—*The Court of Appeal Law* (Cap. 431), s. 12.

When a Resident Magistrate sits as such in a Resident Magistrate's Court to try some matter within his summary Jurisdiction, an appeal from his decision lies to the Court of Appeal and not to a Judge in Chambers.

R. v. Motta—Clark's Rep. 69, referred to.
R. v. Harvey—(1934) 2 J.L.R. 80, referred to.

PRELIMINARY OBJECTION to an appeal from a decision of the Resident Magistrate for Kingston.

Preliminary objection upheld.

Manley, K.C. for complainant-appellant.
Ashenheim (Solicitor) for defendant-respondent.

Cur adv. vult.

1941, JAN. 9: Savary, J. delivered a written judgment:—

SAVARY, J.: The Resident Magistrate of Kingston dismissed a charge against the defendant-respondent of driving away a motor vehicle without the consent of the owner contrary to section 35 (1) of Law 41 of 1937, the Road Traffic Law, and ordered the virtual complainant to pay costs fixed at £2 2s.

As this appeal has been heard long after the Revised Edition of the Laws came into force I propose to refer in this judgment to the corresponding Revised Laws and the sections thereof which are relevant.

The complainant has appealed to a Judge in Chambers under the provisions of sections 3 and 23 of the Appeal Regulation Law, Cap. 435.

A preliminary point was argued that the appeal lay to the Court of Appeal and not a Judge in Chambers. The offence charged was triable under section 91 of the Road Traffic Law Cap. 310, "before a Resident Magistrate or two or more Justices of the Peace sitting in Petty Sessions".

In my opinion these words mean what they say, that is, that the offence is triable before either tribunal, a Resident Magistrate sitting as such, or Justices of the Peace in Petty Session.

The combined effect of sections 296 of the Resident Magistrates Law, Cap. 432, and 12 of the Court of Appeal Law, Cap. 431, is to make an appeal from a judgment of a Resident Magistrate in any case tried by him on indictment or on information in virtue of special statutory summary jurisdiction lie to the Court of Appeal.

The record of the proceedings in this case show that this case was tried on information in virtue of the special summary jurisdiction given by section 91 of the Road Traffic Law, and it was heard by the Resident Magistrate of Kingston sitting as such in the Resident

HIGH COURT. (In Chambers) 1940.

REX ats ROSS LIVINGSTON v. RICKERBY.

Magistrate's Court for the Parish of Kingston. It follows from this that an appeal lies to the Court of Appeal and not to a Judge in Chambers, and I have no jurisdiction to hear this appeal.

In my opinion the proviso in section 296 is intended to make it clear that where the Resident Magistrate is sitting as a Justice in Petty Session an appeal from his decision is regulated by the Appeal Regulation Law, Cap. 435.

R. v. Motta, Clark's Reports, 69, and *R. v. Harvey*, (1934) 2 J.L.R. 80 draw a clear distinction between a Resident Magistrate's Court and a Court of Petty Sessions.

It was admitted that the practice in appeals has been in accordance with my view.

For these reasons the appeal is dismissed.

Solicitor for appellant: *T. N. Willoughby.*
Solicitors for respondent: *Milholland, Ashenheim & Stone.*

HIGH COURT. (St. James Circuit.) 1941.

Mar. 7.

REX ats BERNARD v. HEMMINGS.

13 S.C.J.B.

Animals—Trespass—Cruelty—Shooting and wounding—Unnecessary suffering—Cruelty to Animals Law (Cap. 418), s. 3—*Pound Law* (Cap. 50) ss. 3 and 25.

The appellant was convicted upon an information laid under the Cruelty to Animals Law (Cap. 418, s. 3), charging that the appellant had cruelly illtreated a goat. A kid was trespassing on the property of the appellant's employer; the appellant shot at the kid, the kid ran away and the appellant, not knowing whether he had killed, wounded or missed the kid, paid no further attention to it. In fact the kid was severely wounded, was picked up by a stranger, taken to its owner's yard in great pain and destroyed.

On behalf of the appellant it was submitted: (1) That by virtue of ss. 3 and 25 of the Pound Law (Cap. 50) the appellant had a legal right to shoot the goat and (2) That it is not an offence under s. 3 of the Cruelty to Animals Law to refrain from relieving suffering.

HELD: (1) Every killing of an animal found trespassing is not of necessity without the scope of s. 3 of the Cruelty to Animals Law by virtue of s. 25 of the Pound Law.

(2) There was evidence before the Justice that unnecessary suffering had been caused by the appellant and that consequently the appeal must be dismissed.

Powell v. Knight (1878), 38 L.T. 607, distinguished.
Barnard v. Evans (1925), 2 K.B. 794, followed.

APPEAL from a conviction by a Justice of the Peace in Petty Sessions St. James, for "cruelly illtreating a goat", contrary to s. 3 of Cap. 418.

Appeal dismissed.

Solicitor for appellant: *B. C. O'B. Nation.*
Solicitor for respondent: *Kingsley Clark.*