

J A M A I C A

IN THE COURT OF APPEAL

R.M.CRIMINAL APPEAL NO. 59/72

Before: The Hon. Mr. Justice Fox, Presiding
The Hon. Mr. Justice Smith
The Hon. Mr. Justice Robinson (Ag.)

R. v. EGBERT STEWART

A. Lee Hing for the appellant
R. Alexander for the Crown.

23rd June, 1972.

FOX, J.A.:

The appellant is a tenant farmer at White Hall in St. Thomas. He cultivated sugar cane, peas, potatoes and so on. His lease expired on the 31st of December, 1970; he remained on the land after that date. This is consistent with an apparently well recognized practice which allowed him to await fruition of his crops and to remove them then. But the appellant held over for a very long time. On 13th January, 1972, he was still on the land. In the meantime the land had been leased to the complainant. The complainant reared pigs. On 13th January, 1972, the appellant shot and killed a pig belonging to the complainant which had damaged the appellant's cultivation. The appellant notified the complainant of this fact. The complainant removed the carcass of his pig. Later that day the appellant went with a valuator to serve the complainant with a written notice of the damage which had been done to his cultivation. In the course of the conversation which accompanied the serving of this notice, a quarrel developed which deteriorated into a physical clash between the complainant and the appellant. The appellant threatened to use a cutlass which he had with him. During the tussle it fell from his hand and was taken up by the valuator. The complainant was getting the better of the fight and the valuator drew him away. The appellant got up from the ground where he had been thrown by the complainant, took a knife from his pocket and inflicted three wounds on the shoulder, back and left hand of the complainant. The valuator disarmed the appellant. The complainant was taken to the Princess Margaret hospital where he was treated and admitted as a patient. He was discharged on the fourth day.

The appellant was convicted by the Resident Magistrate, St. Thomas on an indictment charging him with unlawful wounding. At the trial, medical certificates were received in evidence. That relating to the complainant showed the incised wounds which he had received as well as a bruising of his thorax. That relating to the appellant showed the lacerations and abrasions which he had received. The laceration was to his forehead and was the result of a stone flung by the complainant. The injuries of both parties were described as not serious and not likely to be permanent. The appellant was sentenced to three months hard labour.

The appeal as to conviction was abandoned at the outset of Counsel's submissions. This appeal is concerned with sentence. Mr. Lee Hing submitted that it was manifestly severe having regard to all the circumstances. The appellant had no previous convictions. The Magistrate recorded the consideration which Mr. Lee Hing submitted at the trial she should take into account in deciding what was the appropriate sentence. This note reads: "The accused is 53 years old. He is a humble farmer. Sentence to be considered in the light of the rehabilitation value of the offender".

Although it is not recorded, we feel sure that this submission must have been allowed effect in the Magistrate's thinking. We have considered this matter with great care. We can't say that in principle the sentence is excessive, but we have been encouraged in the decision to allow the appeal as to sentence by the observations of the Lord Chief Justice, Lord Widgery, in R. v. Pauline Margaret Jones (1972) Cr. App. R. p. 212. In that case the appellant had been sentenced to a term of three years imprisonment for the offence of child stealing. She kept the child for five weeks. It was clear on the evidence that she deliberately intended to retain the child. The Court of Appeal (Criminal Division) in England was of the view that the sentence of three years imprisonment was not in principle an excessive sentence. The Court was not prepared to say that the learned trial judge was wrong in the assessments that he had made of the matter. This is also our view in this case. But the Court of Appeal (Criminal Division) in England was moved by the address which had been made to them by Counsel. They considered that this was: "...perhaps a case in which this Court, now that matters

have cooled down a little, might show a measure of mercy which the trial judge found it impossible to show". The Court then went on to say they would not take this course if they thought that there was "the slightest risk of other children being stolen by this woman in the same way". They concluded that that fact was ruled out by the medical evidence in the case. They considered that evidence "an extremely important factor in our decision".

We interpret these observations of the Lord Chief Justice as enabling this Court to take a humane view on sentencing in very special cases. We think that this is one such special case. We think so largely on account of the assurance which Mr. Lee Hing was able to give to the Court that firstly, the appellant had removed from the land; secondly, that the land was now in the possession of the landlord; and thirdly, that the complainant had abandoned his lease, had given up farming activities in the White Hall district in St. Thomas, and had gone to live in the Corporate Area of Kingston and St. Andrew. In these circumstances we find it possible, as the Court of Appeal did in the case of Pauline Margaret Jones, on humane considerations to reduce this sentence..

We allow the appeal, set aside the sentence of three months imprisonment with hard labour and substitute a sentence of a fine of Thirty Dollars (\$30.00) or three months hard labour. In addition the appellant is required to enter into his own recognizance with one surety in Fifty Dollars (\$50.00) to keep the peace and be of good behaviour for a period of one year from today's date.

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