

J A M A I C A

IN THE COURT OF APPEAL

R.M. COURTS CIVIL APPEAL No. 57/65

BEFORE: The Hon. Mr. Justice Lewis, Presiding
The Hon. Mr. Justice Moody
The Hon. Mr. Justice Shelley (Acting)

BETWEEN NOEL RAMHI - DEFENDANT/APPELLANT
AND ALFRED MARAGH - PLAINTIFF/RESPONDENT

Mr. E.C.L. Parkinson, Q.C., for Defendant/Appellant
Mr. R. Taylor for Plaintiff/Respondent

1st November, 1966.

SHELLEY, J.A. (Ag.),

This is an appeal from a decision of the learned Resident Magistrate for the parish of Clarendon on a claim brought by the plaintiff/respondent Alfred Maragh for damages for assault and battery and also for conversion of five goats which he alleged the defendant Noel Ramhi shot and killed on the 8th of August, 1963. There was a counter-claim by the defendant/appellant for assault and for trespass by the plaintiff's goats to his land.

The learned Resident Magistrate gave judgment for the plaintiff for the sum of £5 on the claim for assault and the sum of £40 on his claim in respect of the goats. He gave judgment for the plaintiff on the counter-claim for assault and he gave judgment for the defendant on the counter-claim for trespass and awarded him nominal damages amounting to £2. This appeal is as regards the judgment in respect of conversion of the goats and the quantum of damages awarded the defendant for trespass. There is no appeal on the question of assault.

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The facts are, that on the 8th of August, 1963, goats, the property of the plaintiff, trespassed on lands belonging to the defendant. These goats were shot and killed by the defendant and shortly after the plaintiff's wife spoke to the defendant, made it clear that the goats which had been killed were her husband's property, and she asked him to allow her to get the goats. He used words to her indicating that he would shoot her in like manner as the goats if she went on his lands. The plaintiff himself attended at the defendant's gate and he too said that he had heard that the defendant had shot his animals and the defendant told the plaintiff words similar to those told to his wife that if he set his foot on his lands he would shoot and kill him like he had shot the goats. The plaintiff asked him for the goats. The plaintiff was not given permission to take his goats and the goats were not given to him. The subsequent facts are not important because they relate chiefly to the question of assault.

Mr. Parkinson contends that no conversion was proved by the plaintiff; that defendant had a right to kill the goats; he did not know to whom the goats belonged, and, in any event, he had a discretion under Section 27 Sub-section 2 of Chapter 302 to decide whether or not he would allow the plaintiff to enter upon his land to take the carcasses.

The relevant sub-sections of Section 27 of Chapter 302 are:-

"(1) Any owner of land may kill any sheep, goat, kid, hog, pig, fowl, turkey, guinea-fowl, duck or other poultry trespassing on such land;

Provided that on killing such animal the owner of the land shall immediately give notice thereof to the owner of the animal, if known.

/(2) If.....

(2) If any such animal is killed when trespassing the owner may have the carcass thereof, and shall remove the same within six hours.

(3) If the carcass is not removed the owner of the land shall bury or otherwise destroy the same under a penalty of two pounds."

Mr. Parkinson submits that Sub-section 2 is only a re-statement of the Common Law which he cited, correctly in my view, from Salmond on Torts 12th Edition, page 257, where the learned author deals with conversion by detention and at page 261, acts amounting to conversion, and where at page 769 he deals with the recaption of chattels.

As to damages for trespass Mr. Parkinson agrees with the Resident Magistrate that the provisions of the Cattle Trespass Law have no application, but he argues there is no reason why because there was no evidence of actual destruction of crops or actual destruction of anything else, that the defendant should not have been awarded substantial damages for the trespass by the goats.

Mr. Taylor in reply argues that since Sub-section (1) of Section 27 of Chapter 302 specifically provides that notice should be given and Sub-section 2 goes on to provide that the owner of the animals may have the carcasses and Sub-section 3 provides that if the owner of the animals does not remove the carcasses there is a duty on the owner of the land to destroy the same, then if Sub-section 2 were discretionary as Mr. Parkinson contends sub-section 3 would have no meaning at all. He submits that the owner of the land is obliged to give permission to the owner of the carcasses to enter upon his land to take possession of them. In my view, that is not what Sub-section 2 says, nor is it merely a re-statement of the Common Law. I think

(that....

that the learned Resident Magistrate states correctly at paragraph 14 of his reasons for judgment the effect of Sub-section 2 of Section 27 of Chapter 302 where he says

"It is my opinion also that the owner of the land where the animals are shot may refuse the owner of the animals permission to enter his land to retrieve the carcasses and, moreover, it would amount to a trespass if the owner of the animals entered the land without the permission of the owner of the land; in any case, the owner of the land should do everything in his power to make the carcasses available to the owner of them."

In other words, the owner of the land should say upon demand of the carcasses by the owner of them, 'there they are, go and fetch them,' or 'here they are, take them.'

The Resident Magistrate found as a fact that the words used by the defendant to the plaintiff amounted to a denial of the plaintiff's right to the carcasses and was a threat that he would do physical harm to the plaintiff if he entered his land to attempt to retrieve the carcasses.

It seems that whilst the defendant was definitely refusing entry upon his premises by the plaintiff, he remained silent and did nothing about letting the plaintiff have the carcasses and, in my view, that was wrong. The plaintiff was entitled to have them although he was not entitled to enter the premises and the defendant ought to have taken steps to let him have them.

As to the damages awarded by the learned Resident Magistrate for the trespass by these goats, I for my part see no reason for interfering with that award of damages. There is no evidence that any damage was actually done.

/Technically....

Technically these animals did trespass, and therefore, the defendant was entitled to damages; in my view, the sum of £2 is adequate. The effect of what I have said is that I would dismiss this appeal with costs.

LEWIS, J.A.,

I agree. Section 27 Sub-section 2 gives the plaintiff a right - I use the words "in the Section" - to have the carcasses. This means that the defendant ought either to have allowed him to go in and take them, or to make them available to him, and the effect of what he did was to deny him the right to have them either by his making them available to him, or to enter upon the land to get them.

I should for myself, however, wish to reserve the question whether, if the plaintiff in such a case when entry was refused went peacefully upon the land and took them, this would constitute a trespass, as I should like to have argued more closely the question whether the right to have the carcasses impliedly confers upon the owner the right to do all that is reasonably necessary in order to obtain them. Subject to that, I agree with the judgment that has been delivered by my brother Shelley.

MOODY, J.A.,

I agree with the judgment just delivered and observations made by the learned President. Appeal dismissed.

LEWIS, J.A.,

Costs £12.

Amber
L. J. Jones
Shelley