

JAMAICA

IN THE COURT OF APPEAL

R.M. C.A. 68/77

BEFORE: THE HON. MR. JUSTICE ROBINSON - PRESIDENT
THE HON. MR. JUSTICE KERR, J.A.
THE HON. MR. JUSTICE MELVILLE, J.A.

BETWEEN ADRIAN SHEPHERD - PLAINTIFF/APPELLANT
AND BERNICE DOUGLAS - DEFENDANT/RESPONDENT

Mr. Horace Edwards, Q.C. for Plaintiff/Appellant

Miss D. Lightbourne for Defendant/Respondent

November, 18, 1977

KERR, J.A.

This is an appeal by the plaintiff from a judgment of the Resident Magistrate for the parish of St. Thomas. The plaintiff's claim is in effect for damages done to his cultivation for that the defendant, on the 26th day of October, 1975, chopped down certain canes to the amount of five hundred roots, then growing on lands at Pond Piece, Cedar Valley, in the parish of St. Thomas. The claim includes other things, other crops with which we are not concerned, and for Forty Dollars being arrears of water rate paid by the plaintiff, used by the defendant in respect of said land.

By counter-claim the defendant claimed that the plaintiff claimed damages for trespass, that the plaintiff, on the same day, broke and entered the defendant's premises at the said Pond Piece and there disconnected the defendant's water supply and removed pipes.

The plaintiff was the former owner of two bits of land which he sold to the defendant's husband and subsequently she re-purchased one of those bits. The claim and counter-claim are concerned with the bit

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of land still in the possession of the defendant, the widow of the original purchaser.

The Resident Magistrate, in her judgment, found that the plaintiff was liable in trespass in that he entered the defendant's premises and unlawfully removed the pipes therefrom. She gave judgment to the defendant on the counter-claim for One Hundred Dollars and we see no good reason to interfere with that judgment and with the award.

In regard to the plaintiff's claim against the defendant, although the defendant, in abroad pleadings denied trespass, the evidence revealed that she did, on the day in question, chop down the canes of the plaintiff which canes were growing on her land either with her permission or with her acquiescence. The Resident Magistrate found that there was evidence that the canes were planted on the land and there is no evidence to contradict the plaintiff's testimony that he cultivated the land and canes. However she gave judgment for the defendant in regard to that part of the claim on the basis that it was reasonably necessary for the defendant to chop down the canes to ascertain where other pipes had been laid.

It was never suggested in the course of the evidence that she could have ascertained where the pipes were by other means.

We are unwilling to interfere with that finding of fact upon which the defence of necessity was based, since there was evidence, if accepted, which would have met the requirements in law of the defence of necessity.

The other part of the claim, that is the Forty Dollars being arrears of water rate, was never seriously contested, the defendant

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admitting that during the period she had paid no water rates. However, the Resident Magistrate failed to deal with this part of the claim; apparently it escaped her attention.

In the circumstances and from the evidence it is clear that the plaintiff is entitled to succeed on this claim for water rates. Accordingly, to that extent, the appeal is allowed and judgment entered for the plaintiff in the sum of Forty Dollars with the attendant cost in the Court below. Cost of the appeal to be Forty Dollars to the plaintiff.