

IN THE COURT OF APPEAL

SAINT VINCENT

Magistrate's Civil Appeal No. 6 of 1970

Between: JEROME WILLIAMS Appellant

and

FRANCIS HARRY Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Gordon
The Honourable Mr. Justice P. Cecil Lewis

Appearances in person.

1970, December 15

JUDGMENT

CECIL LEWIS, J.A.

This is an appeal by the appellant against the dismissal of his claim for damages for stock trespass which was heard by the magistrate sitting in Kingstown on the 24th day of July, 1970. In his plaint the appellant claimed the sum of \$39.50 for damage to his corn, peas and ochroes allegedly committed by the respondent's sheep. The magistrate holding that the action was brought under the Stock Trespass Ordinance Cap. 46, dismissed the appellant's claim on the following grounds:-

- (a) "The appraisalment (if made) was not in accordance with section 8 (1) (b) of Cap. 46,
- (b) No signed writing of the appraisalment was deposited with the magistrate as required by section 9 (2) and (3) of Cap. 46, and
- (c) The plaintiff did not follow the procedure as set out in section 17 of Cap. 46."

The magistrate misdirected himself in holding that the action was brought under the Stock Trespass Ordinance. This is not so. It was a claim at common law for damage by animals to which the ordinance did not apply. Moreover, he has made no finding as to the facts of the case. In the circumstances, it is quite clear that this claim has to go back to be re-tried. I would accordingly allow the appeal

/and order

and order that the claim be remitted for re-trial before another magistrate.

The appellant will have the costs of this appeal which have been fixed at \$2.45.

(P. Cecil Lewis)
Justice of Appeal

LEWIS, C.J.

I agree.

(Allen Lewis)
Chief Justice

GORDON, J.A.

I agree.

(K. L. Gordon)
Justice of Appeal