MONTSERRAT

IN THE COURT OF APPEAL

MAGISTERIAL CIVIL APPEAL NO. 1 of 1975

BETWEEN: JOSEPH (BUXIE) BUFFONGE - Appellant

And

JOSEPH LEE - Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: John Kelsick for appellant
K. Allen for respondent

1976 March 9, 10

J U D G M E N T

ST. BERNARD J.A:

The respondent was awarded the sum of $590 damages against the appellant for trespass to his motor vehicle on the 25th June, 1973.

The facts found by the Magistrate were that the respondent owned, on the above date, a motor car which he had purchased for about two years previously for $1,000. The car was, about six weeks before, parked, with the assistance of the appellant and others, onto an empty lot of land in the possession of one Joseph Greer. On the 24th June, 1973, the appellant and the respondent had a quarrel and the following day the appellant, using a stick as a lever and with assistance, pushed the car into a nearby ghaut where it remained for about a year prior to the hearing of this action.

At the hearing of this appeal counsel abandoned the first ground which dealt with liability and argued ground 2 which related to mitigation and the quantum of damages.

On this ground counsel submitted that the respondent took no steps to mitigate the damages since he left the car in exactly the same place where it was pushed. He stated that the respondent gave no evidence

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which indicated that the use of a crane to move the car was unreasonable in the circumstances; neither did he cause any investigation into the extent of damage done to the vehicle, nor did he give any approximate value of the car immediately before the act of trespass. He finally submitted that the respondent was not entitled to any damages at all, as he had not proved any. He conceded, however, in answer to a question from the Court, that the respondent would be entitled to damages for the act of trespass but that the damages should be nominal.

The learned Magistrate, although he stated in his reasons for decision at page 19 of the record, that the respondent had not strictly proved what damage flowed from the appellant's wrong doing, nevertheless proceeded to make an assessment and awarded damages. In my view this assessment was based on wrong principles. The only evidence on the record which showed the value of car was the price paid for it in 1971. The car was involved in a collision previous to the 25th June 1973, and was laid up by the side of the road for some time. There was no evidence of the extent of damage caused by the act of trespass.

In my opinion, in these circumstances, the only damage which could properly be awarded by a court was exemplary damages for the trespass. In Mayne & McGregor on Damages, 12th edition, at page 198 paragraph 209, the learned authors state as follows:-

> "Not, however, until the Court of Appeal decision in Owen & Smith v. Reo Motors (1934) 151 L.T.274, was it established that exemplary damages could be awarded in trespass to goods."

In the present case the conduct of the appellant appears to me to merit punishment as it was malicious and vindictive and I would award exemplary damages. Accordingly I would allow the appeal in part, set aside the damages and order made by the Magistrate and in place thereof

/award.....

award the sum of $250.00 damages. Costs of appeal agreed at $75.00

(E. L. ST.BERNARD)
JUSTICE OF APPEAL

I agree.

(MAURICE DAVIS)
CHIEF JUSTICE

I also agree.

(N.PETERKIN)
JUSTICE OF APPEAL