

ANTIGUA & BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.5 of 1985

BETWEEN:

NEVILLE WEST - Appellant

and

ALVIN GOODWIN - Respondent

Before: The Honourable Mr. Justice Bishop - Chief Justice - Acting
 The Honourable Mr. Justice Moe
 The Honourable Mr. Justice Williams (Acting)

Appearances: Mr. Lorick A. Osborne for Appellant
 Mr. John Fuller for Respondent

1985: Nov. 12,
 1986: Jan. 8,
 Feb. 24,
 June 3.
 Nov. 17

DECISIONBISHOP C.J. (Acting)

This decision is written at the request of learned Counsel for the parties each of whom indicated that similar points of law have arisen or are likely to arise in other actions of like nature awaiting decision or trial.

On the 24th July, 1985 in the Court of Summary Jurisdiction, Byron J delivered judgment for Alvin Goodwin against Neville West, in the sum of \$1,400.00 with costs \$140.00 in respect of a trespass committed upon the former's sheep. Cases brought against Montague Joseph and his wife Gweneth were dismissed with costs.

The dismissal of the cases was based entirely upon the fact that the plaintiff, through his Counsel, informed the Court that he no longer wished to pursue the cases; or, put another way, he was not leading any evidence against either of the other defendants. Alvin Goodwin was entitled to decide and to advise the Court as he did, through his Counsel.

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At the trial nothing was urged by Counsel for West before or upon the dismissal. The trial Judge was not invited to consider or decide any aspect of the case and since the plaintiff did not wish to adduce evidence against Montague Joseph or Gweneth Joseph, the learned Judge had no other decision open to him. He did not have a discretion in those cases and there was no onus on him to act in any other way than he did.

It was incorrect to state, as was done in one of the grounds of appeal that the learned trial Judge allowed the plaintiff to withdraw his claim against the two defendants or that he did not grant leave to enable the appellant to join them as third parties. No leave was sought by learned Counsel. In any event, if Counsel held the view that Neville West had a cause of action against either or both of the Josephs, he was free to take the appropriate steps.

The learned trial Judge acted properly in the circumstances when he dismissed the cases and ordered the plaintiff to pay the costs of each of the two defendants.

Although there was an original ground of appeal to the effect that the learned trial Judge erred in law by allowing the plaintiff to withdraw his claim against the 2nd and 3rd defendants learned Counsel also sought to argue two additional grounds which stated, in part, that the learned trial Judge failed to exercise his discretion judicially in dismissing the claims against the 2nd and 3rd defendants. I have shown that, in my view, the learned trial Judge acted properly and so the dismissal of the cases against Montague Joseph and Gweneth Joseph must stand. In addition to what I have already stated, I support the view of learned Counsel for Alvin Goodwin that it was not open to Neville West to complain as he sought to do, about the plaintiff's decision that he was not leading evidence against his co-defendants.

Alvin Goodwin complained in the court below that Neville West had

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destroyed twelve sheep he owned and valued at \$1,400.00, in breach of the Cattle Trespass Act, 1982. No specific section of that Act was quoted, but particulars were provided to justify the quantum of the claim.

The Court of Summary Jurisdiction is not a court of pleadings. No defence was required to be filed and served and when the matter came on for trial counsel for West was not called upon to state his defence. So that at that stage it was not known if the defendant was admitting that he destroyed twelve, or any, sheep belonging to the plaintiff; nor was it known if he was contending that he acted lawfully - either because he was a cattle disposal officer or an authorised person.

Neville West has appealed against the decision of the learned trial Judge, on a number of grounds; it is unnecessary to set them out seriatim, though all the relevant points raised by them have been considered.

On a date between 29th November 1984 and 6th DEcember 1984 - probably on the 5th December 1984 - around midday, Alvin Goodwin set free about twenty of his English short tail sheep to graze. As owner of the sheep and the one who let them loose, Alvin Goodwin was probably in the best position to know the date; and the learned trial Judge accepted his evidence that it was the 5th December 1984. In any event the exact date was not vital to the success of the claim.

The sheep roamed away from home and twelve of them did not return that evening or at any subsequent date. They were seen alive on land at Longford owned by Montague Joseph and cultivated by him and his wife. The sheep were feeding on carrots and beats as they moved along in the two acre plot of land.

Seeing the sheep and the damage done by them, Montague Joseph instructed Neville West to shoot the sheep which were trespassing on his land. Joseph did so because, on previous occasions, and at his

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request, West had shot animals that had trespassed on the land. Joseph and West knew that the animals in question belonged to Goodwin.

Following instructions, West went to Joseph's land where he saw a number of sheep. As he approached to shoot them they ran towards the public road separating Joseph's land from lands of the Women's Action Group. There was evidence to the effect that West shot some of the sheep when they were on Joseph's land and others when they were on the said public road where they had run. West admitted that he fired twice at the sheep. He said in evidence in chief: "I took my first shot in Monty Joseph plot..... My second shot was in the Government road." Under cross-examination he said: "I shot them on the end of the plot going to the road..... Then I shot some more when they were in the road.....". Neville West admitted that he killed seven sheep. Montague Joseph confirmed that when West fired the second shot there were no sheep in his land; and he testified that West told him that he shot three sheep first and then four. The carcasses of the sheep were not seen by either Goodwin or his witnesses and so the ages of the sheep were not given. The plaintiff failed to prove any of the particulars set out in his claim.

In my view, it was clear that the question which fell to be answered was ~~whether~~ whether the act of Neville West, in shooting Goodwin's sheep, was a lawful act or not? The interpretation of certain sections of the Cattle Trespass Act 1982 arose for the attention of the Court.

The Cattle Trespass Act 1982, also referred to herein as the Act, was assented to on the 28th June 1982 and gazetted about three days later. It was passed to update and amend previous provisions of the law relating to cattle trespass and to provide for the appointment and powers of cattle disposal officers, among other things. The Act (section 2(1) defined "cattle" so as to include sheep and their young; and although section 13(1) permitted the proprietor of land or any

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authorised person to cause cattle found trespassing on the land to be impounded, Montague Joseph did not elect to act thereunder. Nor did he seek to authorise anyone to do so.

Section 18 of The Act deals with the appointment of a cattle disposal officer. It states:

"The Minister may, by Notice published in the Gazette and after consultation with the Commissioner of Police, appoint one or more persons who have been trained in the use of firearms to be cattle disposal officers."

In his judgment Byron J. stated: "There was absolutely no evidence that Neville West was ever appointed as a Cattle Disposal Officer under the provisions of section 18 of the Cattle Trespass Act 1982". This finding was irrefutable and learned Counsel for the appellant has agreed that, at the material time, Neville West was not appointed as a cattle disposal officer. Consequently, Neville West did not have and could not properly exercise the powers given to such an officer under section 18 of the Cattle Trespass Act 1982; that is to say, he could not with impunity shoot sheep that were found wandering or straying in any public place or highway without lawful authority. If he did so his act would not be lawful, and he would not be immune from legal action by the owner of any sheep that he shot under section 19.

The question must arise therefore: Was Neville West legally justified in shooting any of the seven sheep owned by Alvin Goodwin?

Section 23 of the Cattle Trespass Act states inter alia:

"It shall be lawful for.....any authorised person to shoot any cattle.....which shall be found trespassing upon any.....land; and if upon such shooting the cattle..... shall be identified as particular property, notice of such shooting shall be given by the proprietor or possessor of land or his agent, to the owner of the cattle.....within twelve hours of such identification and if such proprietor, possessor or agent fails to

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give such notice he shall be guilty of an offence.....; and if the owner of such animal..... shall not remove the same within twelve hours after the receipt of such notice, or if the property cannot be identified the same shall be considered as abandoned and deemed the property of the party aggrieved."

This section deals with three different aspects. The first is the power to shoot animals found trespassing on someone's land and, for the purposes of this case, an authorised person has been given that power. The second aspect deals with the animals after they have been shot; and what is done depends upon whether or not the animals so shot can be identified as particular property. Where they can be identified then there is an obligation to notify their owner within a stated time. Thirdly the owner is required to remove the carcasses within a stated time. Now if the owner is not notified, the failure to fulfil the obligation is a criminal offence carrying a fine of \$100.00 on summary conviction. Where the shot animals cannot be identified or if the owner does not remove them within the stipulated time, they are considered to be abandoned and are deemed to be the property of the party aggrieved.

The expression "authorised person" as used in section 23 is defined in The Act; and learned Counsel for the respondent quite properly conceded before us that on the pertinent facts in this case Neville West was an authorised person.

Under section 23 (quoted above) Neville West, being such a person, it was lawful for him to shoot any sheep found trespassing on lands of Montague Joseph. Thereafter, the obligation of notifying Alvin Goodwin of the shooting, arose. Alvin Goodwin was not notified by anyone and so he was denied the opportunity of removing the carcasses within twelve hours or leaving them where they were shot.

When the learned trial Judge considered the application of section 23 to the evidence before him, he concerned himself with whether or not

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Alvin Goodwin had been notified as required by the section and with the eventual fate of the carcasses. He stated as follows:

".....I am satisfied that the defendant was not acting in accordance with the duty imposed by section 23 of the Act. After the animals were shot and their carcasses identified, they were allowed to vanish into thin air immediately. The owner was not notified..... It seems to me that if the shooting was in fact effected under the authority of the statute the person who did the shooting has a duty to notify the owner of the cattle which were shot....."

The learned trial Judge made the observation that a person acting bona fide under the statute would not conceal the facts nor allow the carcasses to disappear in the circumstances of the instant case. He concluded that the procedure of notifying Alvin Goodwin, not having been followed by West, who allowed the carcasses to disappear, West acted unlawfully and committed a trespass. Put briefly, the learned trial Judge did not consider whether West acted as an authorised person when he shot Goodwin's sheep; but rather gave attention to the failure (which he attributed to West) to give Goodwin notice AFTER the sheep were shot.

In my view the point that fell to be decided by the learned trial Judge was whether Neville West acted lawfully or not at the time he shot the sheep that were trespassing on Joseph's land, and not after he shot them. As I understand the facts, sheep were seen trespassing on Joseph's land; West as an authorised person shot there three sheep when they were found so trespassing. Up to the time that he shot those three sheep he had not done anything unlawful. He had not exceeded his power under section 23. Any omission thereafter by West to complete the requirements of section 23 - if indeed he had an obligation to do so - would be a breach of a statutory duty and could not render unlawful a shooting which was lawfully authorised. There was no claim before the lower court alleging failure on the part of West to perform a duty imposed on him by section 23. The claim was for trespass to the sheep by shooting. In my view, it was lawful for West to shoot the three sheep found trespassing on Montague Joseph's land.

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The next question which had to be answered was whether Neville West acted lawfully or not when he shot the four sheep which were in the public road. Learned Counsel for the appellant submitted that West was legally justified in pursuing the sheep that ran out of the land on to the public road. He contended that they had been seen trespassing and that it was perfectly reasonable to follow them into the public road and shoot them. In answer to my learned brother, Moe J.A., Counsel said that if the sheep had run from the land whereon they had trespassed to adjoining land belonging to their owner (that is, if they had run home), it would be legally proper to follow them and shoot them because they had been "found trespassing" - the words used by section 23 of the Act.

With respect, I am unable to agree with learned Counsel for the appellant. In my view, when section 23 is read as a whole and along with the rest of the Act, it is contemplated that shooting under section 23 is limited to cattle trespassing on land, and an authorised person (or the proprietor, or possessor or the person in charge of the land) may shoot them. On the other hand, when cattle are wandering or straying on to a public road or highway which is expected to be used by members of the public, then a greater degree of responsibility and care is called for; and so the Act, in its wisdom, confers the power of shooting such cattle on the cattle disposal officer, who is a person that must be trained in the use of firearms, and must be appointed by a Minister of Government after consultation with the Commissioner of Police. Further, there must be notice of the appointment to the world at large by publication in the Gazette. When that is done the person so appointed may shoot cattle found without authority not only in the public road or highway but in any public place, wharf, quay, or square (see section 19 of the Act).

Neville West was not a cattle disposal officer when he shot the sheep that had strayed or run on to the public road from Montague Joseph's land. He was not empowered to shoot those four sheep there, and consequently he could be sued by Alvin Goodwin in respect of such

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shooting.

Learned Counsel for the respondent conceded that the learned trial Judge was wrong to find as a fact that Neville West destroyed twelve sheep. It was agreed that he destroyed seven. In my view he was legally entitled under section 23 to destroy the three sheep that were shot on the land. There was no issue before the trial Judge for a decision with respect to the obligation to give notice and so I have not considered it. The four sheep that were shot when they were in the public road were unlawfully destroyed. The respondent Alvin Goodwin is entitled to damages for that wrongful act, and using the formula agreed upon by learned Counsel for the parties (i.e) 4/12th of \$1,400.00) I would award damages in the sum of \$466.66 with costs.

The decision of the learned trial Judge ought therefore to be varied accordingly and I would so order.

E.H.A. BISHOP,
Chief Justice (Acting)

I agree.

G.C.R. MOE,
Justice of Appeal

I also agree.

L. WILLIAMS,
Justice of Appeal (Acting).