GRENADA

IN THE COURT OF APPEAL

MAGIS. CIV. APP. NO.4 OF 1996

BETWEEN:

ALFRED QUASHIE

Appellant

and

WINSTON FLEARY

Respondent

Before:

The Hon. Mr. C.M. Dennis Byron	Chief Justice [Ag.]
The Hon. Mr. Satrohan Singh	Justice of Appeal
The Hon. Mr. Albert N.J. Matthew	Justice of Appeal [Ag.]

Appearances:

Mrs. Celia Edwards for the Appellant
Respondent absent and unrepresented

1997: November 27;
December 8.

Tort Law - Damage to the appellant's crops by the respondent's cows - Principles governing the upholding of a submission of no case (to answer). Appeal allowed. Case remitted for trial before a different magistrate.

JUDGMENT

MATTHEW, J.A. [AG.]

Having satisfied ourselves that the Respondent was duly served in this long outstanding matter we heard learned Counsel for the Appellant, allowed the appeal, set the decision of the learned Magistrate aside, remitted the matter for trial before a different Magistrate and promised to give the reasons for our decision in writing.

In September, 1995 the Appellant filed a claim before the learned Magistrate of the Northern District seeking damages from the Respondent whose cows were alleged to have damaged the Appellant's garden in December, 1994 and destroyed a large quantity of growing crops to an amount of $4,361.75.

At the trial which appears to have taken place in March, 1996 only two witnesses gave evidence, the Appellant and his sister-in-law, Violet Quashie.

At the conclusion of the Appellant's case, the learned Magistrate dismissed the case holding there was no case to answer. He further stated that the two witnesses contradicted each other on vital issues. Later in his reasons for

decision, the learned Magistrate stated that at the conclusion of the evidence for the plaintiff, the Court had to be satisfied inter alia:

[1] That there were in existence the crops as described by the witnesses;

[2] That those crops were damaged and or destroyed by cows; and

[3] That those cows that damaged and/or destroyed those crops either in total or in part belonged to Mr. Fleary.

He said the Court was satisfied on points [1] and [2] but was not satisfied on point [3] because among other things the Court considered Violet Quashie's assertion that she knew the cows to be Mr. Fleary's without more, to be insufficient for proving that the cows were indeed Mr. Fleary's cows.

In his Notice of Appeal filed on March 28, 1996 the Appellant gave the following as some of his reasons for appeal:

[1] The learned Magistrate erred in law dismissing the case of the plaintiff on the ground that there was no case to answer.

[2] The learned Magistrate erred in law in holding that the discrepancies in the witnesses' evidence were such as would amount to "no case to answer".

[3] The ruling is against the weight of the evidence.

The learned authors of Halsbury's Laws of England, Fourth Edition, Volume 37 dealing with "Submission of No Case" state at paragraph 516 the following:

> "The defendant may make a submission that there is no case to answer after the plaintiff's case has been closed. Such a submission may be made either where the evidence adduced by the plaintiff does not establish any case in law for the defendant to answer, or where the evidence is so unsatisfactory or unreliable that the court should rule that the burden of proof on the plaintiff has not been discharged."

Volume 1 of the 1992 edition of `Stone's Justices' Manual paragraph 2 – 614/615 puts it as follows:

> "2-614 **No case to answer** – Once all the evidence for the complainant or prosecution has been heard [**a**], the court may dismiss the case either of its own motion or on a submission of no case to answer if it believes it need not hear the evidence for the defence.
> In a civil case [but not in a criminal case] the defendant's advocate should be given the choice of making a submission or of calling evidence, but if he is not given the choice, he should then be allowed to call evidence if the submission fails [**b**]. In any event, the complainant's solicitor must be given the opportunity to address the court before it considers a dismissal [**c**], a practice which in our view ought also to apply in a criminal case. Where a submission fails, the defendant or his advocate is then entitled to address the court on the facts [**d**].
> 2-615 – The High Court has stated the circumstances in which a court may find no case to answer as follows:

In criminal cases: "without attempting to law down any principle of law, we think that as a matter of practice justices should be guided by the following considerations. A submission that there is no case to answer may properly be made and upheld [a] when there has been no evidence to prove an essential element in the alleged offence; [b] when the evidence adduced by the prosecution has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict on it. Apart from these two situations a tribunal should not in general be called to reach a decision as to conviction or acquittal until the whole of the evidence which either side wishes to tender has been placed before it. If however a submission is made that there is no case to answer, the decision should depend not so much on whether the adjudicating tribunal [if compelled to do so] would at that stage convict or acquit but on whether the evidence is such that a reasonable tribunal might convict. If a reasonable tribunal might convict on the evidence so far laid before it, there is a case to answer"[**a**]

2. In matrimonial cases: there are very few matrimonial cases in which justice can be done without hearing both sides…a power to dismiss a case at the conclusion of the complainant's case should be exercised only in exceptional cases; for example where no credence can be given to the complainant's evidence, where it is crystal clear that the complainant has no case in law." [b]. Where an issue of conduct arises it is unwise of justices to accept submission of no case to answer on the evidence as distinct from some point of law [c].
3. In other cases: We suggest that the principle stated for matrimonial cases would also apply in guardianship proceedings, but that the principle stated in criminal cases would apply in other civil proceedings. In care proceedings the court should adopt the practice followed in matrimonial cases and exercise its power to dismiss the case at the conclusion of the complainant's case only in exceptional cases. It is rarely appropriate to put an advocate to his election whether to call evidence or stand on his submission, and thereby exclude evidence which might be material to the child's welfare [d]."

In this case the Appellant gave evidence before the learned Magistrate to the effect that he had a variety of crops growing on his land when he last visited the area about December 18, 1994 and on December 19, 1994 Violet Quashie made a report to him after which he went to his garden. He said he saw a break in the fence and there was damage to the garden. In the immediate vicinity were four cows owned by the Respondent. He said he knows the Respondent's cows which were of a special breed and he described the four cows he saw. Under cross-examination, he admitted that he did not see the cows in his garden but he said they were the only cows in the area at the time.

Violet Quashie whose children are the nephews/nieces of the Appellant has her garden next to that of the Appellant. She said on December 19, 1994 the Respondent's cows were in the Appellant's garden and they ate his produce. She said she drove out the cows. She said she knows the cows were Mr.

Fleary's cows. She then went to call the Appellant. Her cross-examination was not very effective. When she was questioned by the Court she said there were about seven cows in all – Ken owned one, Packlett owned one, Depter owned two and the balance belonged to the Respondent.

It seems to me that on the evidence there was a case for the Respondent to answer and I am of the view that the learned Magistrate ought to have allowed the case to continue to hear the Respondent's testimony and then to have all the evidence before him and then make a proper finding. I do not find that there was any contradiction between the evidence of the Appellant and that of his witness.

The appeal is therefore allowed, the decision of the learned Magistrate is set aside and the case is remitted for trial before a different Magistrate.

A.N.J. MATTHEW
Justice of Appeal [Ag.]

I Concur.

C. M. DENNIS BYRON
Chief Justice [Ag.]

I Concur.

SATROHAN SINGH
Justice of Appeal