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ATTORNEY GENERAL
CHAMBERS

001 -- 1973

GRAND CAYMAN B.W.I.

IN THE COURT OF APPEAL

R. M. CIVIL APPEAL NO. 80/72

B E F O R E:

The Hon. Mr. Justice Smith
The Hon. Mr. Justice Edun

The Hon. Mr. Justice Robinson (Ag.)

CECIL CHAMBERS V. AUGUSTUS ROBERTS.

Horace Edwards, Q.C., for Plaintiff/Appellant
No appearance for Respondent.

31st May, 1973.

SMITH, J.A.:

This is an appeal from a judgment of His Hon. Mr. L. L. Cousins Resident Magistrate for the parish of Clarendon, in an action for negligence.

The plaintiff's claim was in respect of the value of a cow which, it was alleged, the defendant had negligently shot. The plaintiff's evidence was that on the 24th February, 1972, alongside the river at Bog Farm in Clarendon, the defendant was shooting cows: that he shot at a group of cows in which was at least one of the plaintiff's cows. There was no evidence given that it was realised at the time that the plaintiff's cow had been shot, and evidence was given by the plaintiff and his son Wilberforce Roberts that subsequent to the 24th of February, and up to the 3rd. of March, they saw nothing to indicate that there was anything wrong with the cow. But on the 4th of March, the cow was found dead. The plaintiff said he saw a bullet spot on the cow and the son Wilberforce used a knife and removed a bullet from the hide of the cow. There was no evidence of the part of the body of the cow from which this bullet was removed. The plaintiff took the bullet to the defendant and asked him if

he knew/.....

he knew he had shot his cow and the defendant answered that he did not know about that. The plaintiff went with the bullet to the Lionel Town police station where he made a report.

The plaintiff said in evidence that on the 7th of March, defendant came to his home and said that Inspector Campbell had sent him (the defendant) to him (the plaintiff) and that he (the defendant) is very sorry. The plaintiff said he showed the bullet again to the defendant and the defendant said, 'yes, I use these kind of bullets to shoot cows'. He said that the defendant then and there agreed to pay \$120 for the cow; that the defendant said he cannot pay the whole at one time but he would pay it in half as he is not working. The plaintiff said that he valued the cow for \$200. His son Wilberforce and one Icilda Evans gave evidence in support of the plaintiff's case that the defendant had agreed to pay \$120 for the cow.

In my opinion, apart from this alleged agreement, there was no evidence on which it could reasonably be found that the cow died as a result of being shot by the plaintiff. However, in my view, it was open to the learned Resident Magistrate to accept the evidence of the plaintiff and his witnesses that the defendant had agreed to pay for the cow, and also, in my view, he could infer from this agreement an admission by the defendant that he had indeed shot the cow and that the cow died as a result.

In his evidence the defendant denied that he had shot the plaintiff's cow and he denied that he agreed to pay for it.

The learned Resident Magistrate accepted the plaintiff's evidence and that of his witnesses and he found, as stated in his reasons for judgment, that the defendant had fired the shots into a "flock" of cows and that the plaintiff's cow was among the "flock" and had died as a result of being hit. He found, further, that the defendant had offered to pay \$120 for the cow and that his offer was accepted by the plaintiff. Finally, he found "that the wrongful act of the defendant in recklessly or carelessly shooting

the plaintiff's/.....

the plaintiff's cow was merged in the agreement later made. He continued: "I would have granted to the plaintiff an amendment to his particulars of claim to show the agreement had a formal application therefor been made. I held the defendant liable on his agreement and therefore gave judgment in plaintiff's favour accordingly!".

Mr. Edwards argued first of all that the judgment of the learned Resident Magistrate was unreasonable having regard to the evidence. As I said, once it was believed that the plaintiff agreed to pay for the cow, it was open to the learned Resident Magistrate to find that there was an admission that he was responsible for the death of the cow. Mr. Edwards argued further, that the Resident Magistrate was wrong, without an amendment being made of the particulars of claim, to find for the plaintiff on the ground of the agreement, admitting that there was an accord and satisfaction. Mr. Edwards said that it was improper or legally wrong for the learned Resident Magistrate to give a judgment in those circumstances as the plaintiff has succeeded on a cause of action which was not before the court.

In my view, there was not sufficient evidence for the learned Resident Magistrate to find that there was an unconditional acceptance of the offer to pay for the cow. In other words, there may have been an accord but not unconditional satisfaction. The conduct of the plaintiff in suing in negligence for the value of the cow, a value which was put at \$200, suggests that at least the offer which it was found was made was accepted conditionally on the defendant paying or discharging the liability subsequently. If this is so, it would still be open to him, that is to the plaintiff, to bring an action in negligence, which he did. On the findings made by the learned Resident Magistrate, it is clear that had he directed his mind to liability in respect of negligence he would have found for the plaintiff.

The Judicature (Resident Magistrates) Law, Chapter 179 provides in section 251, that no judgment, decree, or order of a Court shall be altered, reversed, or remitted, where the effect of the judgment shall be to do substantial justice between the parties to the cause. I would uphold the judgment on the ground that the claim for negligence has been established and that the plaintiff is entitled to succeed on his claim.

On the question of damages, the plaintiff does not himself say that he accepted the offer made by the defendant, but his son said that the plaintiff asked \$180 for the cow and that he, (the son) then said that since the shooting of the cow was accidental he thought \$120 would be a fair price for the defendant to pay. In my opinion, it was open to the learned Resident Magistrate, had he directed his mind to it, to find that the sum of \$120 was, in the circumstances, a fair sum to award for negligence.

In the circumstances, I would dismiss the appeal and, since there has been no appearance on behalf of the plaintiff before us, I would make no order as to cost.

Edun, J.A.;

I agree.

Robinson, J.A.;

I agree.

Smith, J.A.:

The judgment of the Court is that the appeal is dismissed, the judgment of the Resident Magistrate is affirmed. There will be no order as to cost.