

Lonitenisi v Tu'i'onetoa

Supreme Court, Neiafu, Vava'u

Hampton CJ

App 709/95

1 May, 1997

Animals - trespass by - killing of - duties owners
Pounds & Animals Act - obligations - owner and finder

This was an appeal against a judgment in the Magistrates' Court ordering the appellant to pay to the respondents one half the value of their pig which the appellant trapped on his allotment.

Held:

1. The Pounds and Animals Act was important and, although not cited, supported the Magistrate's view.
2. An owner of animals has a duty to fence and properly secure them.
3. An owner of a plantation has a duty to fully fence and secure his crops, particularly where, as here, the appellant knew destruction of his crops in the past by pigs.
4. A person in the appellant's position does not have the right to kill the trespassing animal. His duty is to seize it and turn it into the nearest pound; and then it is for the police (supervisors, of pounds) to take steps under the Act. The appellant can recover compensation for damage done by the animal.
5. So there are proper procedures and remedies. The Magistrate was right to find fault on both sides.
6. Appeal dismissed.

Statutes considered : Pounds & Animals Act

Counsel for appellant : Mr Paasi

Counsel for respondent : Mr Piukala

Judgment

On 25th July 1995 in Magistrates Court in Neiafu, Magistrate Pifeleti gave a judgment in favour of the respondents in this Court, the plaintiff's in the court below for \$325. That judgment for \$325 was on the claim for \$750 for the loss of a pig, a sow and 10 unborn piglets the sow belonging to the respondents and having been killed by the appellant on the 5th June 1995. I do not intend to spend a lot of time on this and I do not intend, as Mr. Paasi has suggested to me, that I should lay down some high sounding precedent for all citizens and in future, what to do about pigs.

50 I deal with the matter on the simple basis that it has not been shown to me, in submissions, that the Magistrate in the court below was wrong. It is not a matter with constitutional importance, or indeed touching on any aspect of the Constitution, as the appellant claimed.

No authorities were cited to me and apart from a provision in the Criminal Offences Act, in effect no legislation pointed to in submissions. But it seems to me that the Pounds and Animals Act (Cap 147) is of importance in this area. Perhaps it is little known and used, but it does support the view that the Magistrate came to.

I do not intend to review the facts. The findings of the Magistrate are clear. He is an experienced Magistrate, familiar with local conditions.

60 The pig killed was found within the appellant's property. It was trapped. It being caught he then put it to death.

The Magistrate found duties or obligations on each side. First, in relation to the respondents, the owner of the pig, not only to care for but to fence and properly secure their animals. He is quite correct in that and section 16 of the Pounds and Animals Act is to the same effect. It says that any person who is the owner or occupier of land, who keeps various types of animals including pigs, and neglects to enclose them within a fence or otherwise secure them, shall be guilty of an offence.

70 So there was a clear obligation. As to the appellant, the Magistrate found that there was an obligation, a duty to care for and maintain and fence his crops.

In the context of the local community, I agree with the Magistrate about that. Each side, the Magistrate said, failed in their respective duties. First the respondents let out their pigs from the sty and let them wander loose despite warnings from others about that in the past, including the appellant.

Secondly, the appellant, knowing the situation and the claimed trespass by animals in the past and destruction of his crops, failed to fully fence and secure his plantation. The Magistrate found it was not fully fenced and secured and in particular there was no gate and he relied, in relation to that, on the evidence of an independent witness.

80 The Magistrate found that the pig having been trapped inside the appellant's property, that did not allow the appellant, he did not have the right, to kill the pig immediately but using the words of the Magistrate, he omitted to notify the owner of the situation and have the pig in effect removed. There was no need to proceed and kill it straight away or indeed to kill it at all. It seems to me there was force to that and the force is underlined again by the provisions of the Pounds and Animals Act which provides, particularly in section 5 and 17, for remedies available to a person in the appellant's position, and remedies that do not involve killing animals.

90 Section 5 says the owner or occupier of any cultivated or pasture land or of any enclosed land may seize any pig found trespassing on such land, and then turn it in to the

nearest pound.

And then it is for the police, who have the supervision of the pounds, to take steps under the Act. Now that is the proper remedy of someone in the appellant's situation.

In addition, under section 17 of the same Act, he is given the right, if his land is trespassed upon by a pig, to recover from the owner or a person in charge of the pig, compensation for the damage done.

So first there were proper procedures; secondly there was a remedy available. The appellant did not counter-claim in the court below for damage done to his crops and that of course was entirely over to him.

100 The Magistrate in effect found fault on both sides and, in a quite sensible way, reduced the claim by half. I am not persuaded to interfere with that judgment. He was in the best position to assess the matter, given the local situation and local conditions. Indeed the appellant, may have been lucky to escape with just half the claim.

The appeal will be dismissed. The respondent, it seems to me should be entitled to costs.