

BARBADOS:

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL**

Magisterial Appeal No. 10 of 2000

BETWEEN:

LIONEL BURROWES

(Appellant)

AND

COMMISSIONER OF POLICE

(Respondent)

Before: The Honourable Sir Denys Williams, Chief Justice, The Honourable Mr. Justice Errol Chase and The Honourable Mr. Justice Frederick L.A. Waterman, Justices of Appeal.

2001: January 4th.

Mr. M. Atwell, Mr. R. Byer and Mr. W. Hoppin for Appellant.

Mr. T. Gibbs for Respondent.

DECISION

Section 3 of the Criminal Damage Act Cap. 113B enacts that a person who without lawful excuse destroys or damages any property belonging to another intending to destroy or damage any such property, or being reckless as to whether any such property would be destroyed or damaged is guilty of an offence; and section 13 that no rule of law ousting the jurisdiction of Magistrate's Courts to try offences where a dispute of title to property is involved precludes a Magistrate's Court from trying offences against that Act or any other offences of destroying or damaging property.

The Commissioner of Police lodged an information against the appellant Lionel Burrowes in which he charged that Burrowes at the parish of Saint George within the jurisdiction of the Magistrate of District "B" on the 21st day of December, 1995 without lawful excuse committed damage to eight metal poles belonging to Annette Butcher contrary to section 3 of the Criminal Damage Act Cap. 113. Under section 9 Burrowes was liable (i) on indictment to imprisonment for 20 years or to a fine of \$10,000.00 or to both or (ii) on summary conviction to imprisonment for two years or to a fine of \$2,000 or to both.

The record discloses that when the case was called Burrowes consented to summary trial and pleaded not guilty. The record further discloses that evidence was led by the prosecution and the defendant gave evidence after which the Magistrate found the appellant guilty. The Magistrate commented:-

"Four witnesses gave evidence for the prosecution. The accused also gave evidence on oath. He admitted that he 'pulled up' the poles but denied that they were damaged. However, after considering the evidence in its totality, the court was satisfied that the accused did damage to the poles without lawful excuse and that the charge against him was proved to the standard required by law

The accused was found guilty.

Mr. Byer submitted that the Court did not have jurisdiction to hear the case because a question of title was involved. This submission was not upheld."

The Magistrate went on to say that the court was not satisfied that an issue of title was involved but even if this were so, section 13 of the Criminal Damage Act was in point.

This was an unfortunate case in which the appellant and his daughter became involved in what can realistically be regarded as a domestic dispute. An extract from his daughter's evidence illustrates their previous relationship:-

"In 1985 my father along with three other sisters went to Yearwood and Boyce who have the papers for the land; we went to find out if as descendants we could build. The lawyers said yes as descendants we could build. Construction started in 1985. Before construction started land was surveyed because it was intended to straighten it up. My father told us to chose spot. There are three pieces of land. I choose my area, in excess of one acre".

The then existing harmony between father and daughter has given way to friction. It is to be hoped that the order made in this proceeding can spark a reconciliation and that the appellant's hasty action does not preclude some rapprochement. The appellant's rash has resulted in a conviction which he would like removed. But there can be no question of his not compensating his daughter for the damage that he has done to her fencing.

An order which in our view would achieve a fair conciliatory result is for the appellant to compensate the daughter for the damage. On that being done the Court would be in a position to order the appellant's conviction to be lifted and a reprimand and discharge to be substituted.

Liberty is granted to apply.

Chief Justice.

Justice of Appeal. Justice of Appeal.