

James Hattaufyderhyde vs. Thomas Higgins
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JUDGMENT

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Judgment Book

Willkie, J.

The Plaintiff's case is that he is a farmer and owns and occupies lands at Turner's River, Brown's Town, St. Ann. That these lands were cultivated in grass, pimento trees, citrus and lumber trees; and adjoin lands owned and occupied by the defendant. That on 7th April, 1973, while at his home, defendant came there and told him he was in trouble with him. That he asked him what had happened and defendant told him that he (defendant) light his cocoa bush with fire, left it and went to Brown's Town and when he came back he find the fire escape and come over into his (plaintiff's) land and burn down his pimento trees. That defendant asked him to come to the fire. That he accompanied defendant to the land and found fire raging there. That he subsequently obtained help and the fire was put out. That the fire caused damage to about five acres of the land.

On the following day (a Sunday) he saw the defendant at his (defendant's) gate, defendant asked him what is he going to do about the fire and damage; he told defendant that since he (defendant) had burned down all his valuable pimento trees the land don't worth much, so he had decided to cut up the land and sell it as people had been worrying him about it and according to the position of his (defendant's) land he would like the defendant to give him a road near his place to get to his (plaintiff's) land to compromise it. Defendant said yes he could get the road. That he told defendant he should meet him on the following Tuesday at his (plaintiff's) house and defendant agreed to this.

He next saw defendant on the Tuesday evening at his (plaintiff's) brother's home when defendant told him he is not giving him the road any more because is not him burn it. That he told defendant he was going to value the damage. The services of Mr. McTaggart, valuator, was obtained. That he accompanied

Mr. McTaggart to defendant's home when he served the Notice of Valuation upon defendant on the following Wednesday. Defendant told him he was going to show him (plaintiff) the person who burned the place, and called one John Campbell who works for the defendant. That Campbell said in the presence and hearing of defendant that both defendant and himself cut the cocoa bush, but he was not ready to burn his yet, but defendant light it for him and leave to Brown's Town and the fire escape over his (plaintiff's) place and burn down all the trees. The damage was subsequently valued in the presence of defendant, who agreed to the number and type of trees damaged and the extent of the damage.

The defendant denies plaintiff's allegations. Defendant's case was that his land adjoins plaintiff's land and is separated from it by a stone wall. That although there are pimento trees, citrus trees, some lumber trees in plaintiff's land it is in ruinate. That he knows one John Campbell who works for one Mr. Green on other days and works for him on Thursdays and Fridays only.

In February 1973, Campbell asked him if he could give him the hill to cultivate, which was then woodland, and he did so free of charge. That Campbell cut down the woodland. That on Saturday, 17th April. 1973, he left to Brown's Town to trim his hair. He then saw Campbell in the coconut walk on the land cutting limbs to make his hut. He left for Brown's Town about 7 a.m. He returned about 1 p.m., when he saw Campbell who told him that fire get away from him; he (Campbell) had make up fire to cook his breakfast when he go down to carry the next bundle of coconut limb to make his hut; and when he down there he saw the smoke. When he came up to where he had made up the fire, the fire had got away; that he tried to put it out, but could not manage it. That Campbell and himself tried to put it out, but could not and he went to plaintiff and told him fire was in his (plaintiff's) place and his (defendant's). That they left and came to the land.

Plaintiff went for help, and Campbell and himself put out the fire and he returned to his yard. Later at about 5 p.m. that day (Saturday) he saw plaintiff at plaintiff's sister's home when plaintiff told him he (plaintiff) wanted a road. That on the Sunday morning he was at his gate and he saw plaintiff at his gate. That plaintiff told him to come and let him show him where he want the road. He followed plaintiff on the roadway and plaintiff showed him where he wanted the road. The place pointed out was between his house and one Mr. Gordon's house. He said he told him he can't do no business with him is Mr. Green looking after his business and he can't make any plans back of him and plaintiff got vexed, and drive away. He next saw the plaintiff on the Monday driving away from Mr. Green's home. On the following Wednesday Mr. McTaggart, the Valuator, came and handed him a paper. That he told plaintiff to go to Mr. Green and call out for John Campbell. That plaintiff drove to Green's gate and he (defendant) called Campbell, who came. That he told Campbell to tell plaintiff how the fire get away. That Campbell said he was cutting coconut limb to make his hut, he carried up the first bundle and then make up his fire and went for another bundle, when him down there he saw big smoke and fire getting away; that he went to out the fire but he could not manage it. That plaintiff then drive away.

John Campbell gave evidence for the defendant and supported this contention as to how the fire started. Campbell also deposed that on two occasions plaintiff offered him Forty Pounds (£40) to say that it was not he (Campbell) who started the fire.

Having heard the witnesses I accept the evidence of plaintiff as to what transpired at his home that morning when defendant came to his home and reported the fire. I do not accept that the defendant was speaking the truth. The defendant's whole conduct in relation to plaintiff's request for a roadway as a compromise directly contradict his testimony before the Court and leads me to reject his entire evidence and hold that

he is not a witness of truth. In his examination in chief, he said that he next saw the plaintiff after the fire at plaintiff's sister's home on the Saturday at about 5 p.m. when plaintiff told him he wanted a road. Defendant apparently said nothing to plaintiff then. Why then should plaintiff be asking for a road? Defendant's evidence is that when Campbell told him of the fire and he himself saw the fire, he went to plaintiff's home and all he told the plaintiff was that fire was at his (plaintiff's) place and at his (defendant's) place. He did not tell him how the fire had started. On defendant's evidence of what he told plaintiff the fire could have started either on plaintiff's land or on defendant's land; so why should plaintiff ask for a road.

It is patent that plaintiff must have held the view that defendant was responsible for the start of the fire. How could plaintiff have arrived at that conclusion? Plaintiff stated that defendant told him that he (defendant) had light his cocoa bush, left it, and went to Brown's Town and came back to find the fire had escaped over in the plaintiff's land. Surely it is reasonable to infer that it was upon this information the plaintiff concluded that defendant was responsible for the start of the fire and as a consequence asked for a roadway to compensate for the damage done to his (plaintiff's) property. Again, defendant's evidence that on the Sunday morning when he saw the plaintiff at his gate and plaintiff asked him to come and let him show him where he wanted the road, he followed plaintiff along the roadway and plaintiff indicated the spot. That the spot indicated was between his house and Mr. Gordon's house. What was his reply to plaintiff's request? Not that it was Campbell who was responsible for the fire; but he told plaintiff that he can't do any business with him, it is Mr. Green looking after his business and he can't make any plans behind his back.

In cross-examination the defendant's evidence is significant in this regard. He stated, "I thought that where Mr. Hyde

(Plaintiff) want me to give him the road was unreasonable; he could never get a road there because it was going to run between the two houses. The houses would not be private".

What does he mean by this statement? I am of the view that he is clearly admitting responsibility for the fire and consequent damage to plaintiff's property, and that he is willing to give a roadway as a compromise, but is of the view that the plaintiff is unreasonable in asking for a roadway at that particular spot. The parting of the way between plaintiff and defendant came about, not because defendant is saying that he is not responsible for the fire but because he is not prepared to give plaintiff a roadway at the point indicated by the plaintiff.

Defendant went on and stated in cross-examination, that he did show plaintiff another spot where he (plaintiff) could put the road. That he told him he can't get a road there on that spot or any other spot, noways; that Mr. Hyde said I must give him a road; that they did not discuss it; that he (plaintiff) said he must come with him, make him show him where he wanted the road and he went with him to the spot where he said he want the road, and he said no he can't get it. That he (plaintiff) wanted the shorter part of his (defendant's) place to go up to his place. This must be so as is why he want his place to make the road that he (Plaintiff) should cut his (defendant's) place and make a road. He further stated that if he had no business with a person and he is standing at his gate, and he came and said he wanted a road through my land he would tell ^{him} he can't get it. That Mr. Hyde pick ~~the~~ place and he told him he can't get any road there. If defendant is to be believed, up to this time he has said nothing at all about Campbell to Plaintiff. The first time he makes mention of Campbell is on the following Wednesday after he is served the notice of valuation by McTaggart, when he accompanies McTaggart to his gate and sees plaintiff and tells him to go to Green's gate. That Plaintiff drive to Green's gate, he follows and calls John Campbell who comes, and he tells Campbell to tell Mr. Hyde how the fire get away. Campbell thereupon states "He cutting coconut limb to make his but, he carry up the first bundle first and then make up his fire and

went for another bundle and when him down there him see big smoke and said fire get away; that he went to out the fire but he could not manage it! This was the very first time, on the defendant's evidence, that Campbell ^{is} mentioned to plaintiff. The fire occurred on the Saturday - defendant saw plaintiff on the Saturday; firstly, when he went to advise him of the fire. Defendant's evidence is that Campbell had explained to him how the fire occurred. He said nothing of this to Plaintiff, he merely told plaintiff fire was over plaintiff's place and also his place. He accompanied plaintiff to the premises in plaintiff's car. He still said nothing about Campbell. He was left at the premises while plaintiff went for help. He next saw plaintiff that evening at about 5 p.m. at plaintiff's sister's home, when plaintiff asked for the road, he says nothing to plaintiff about Campbell. He next sees plaintiff the Sunday at his gate, when plaintiff spoke to him about the road and he follows plaintiff along the road and plaintiff indicated the spot where he wanted the road. He tells Plaintiff nothing about Campbell, but instead states that he can do nothing behind Mr. Green's back as Mr. Green handles his affairs. He next saw plaintiff on the Monday driving away from Mr. Green's gate. He was going to Green's home. He says nothing to plaintiff about Campbell. It is on the Wednesday after the Valuation Notice has been served on him that he first spoke about Campbell. What is the position of Mr. Green in all this? On defendant's evidence Mr. Green looks after his affairs. Green in his evidence stated that he saw defendant the Sunday morning and spoke to him and looked at the land. The land he is referring to must be the damaged property. He stated that he saw plaintiff on either the Monday or Tuesday following, that plaintiff came to him at his home and he was getting ready to go out, that plaintiff told him he has asked defendant for a road and defendant had told him he could not do anything until he plaintiff came to him, that he told plaintiff he was very sorry he could not do anything at the moment but plaintiff should wait until weekend when he would ask two friends, the former parish officer of the Ministry of Agriculture and a road engineer of Kaiser Bauxite

to go with plaintiff, defendant and himself, and they would work out something, that plaintiff said, you don't know me, it must either be now, or I am going to Brown's Town for further action, and he drove away.

Why a former parish officer from the Ministry of Agriculture and a road engineer? The reasonable inferences to be drawn from the qualifications^{of} these two persons are clearly:

- (a) to ascertain the extent of and quantum of damage done to the plaintiff's property, and
- (b) where on defendant's land would be suitable to lay down a roadway.

Defendant had spoken to Green on the Sunday and he (Green) inspected the land. Green is defendant's man of business. Why would he be negotiating on behalf of defendant for a road if defendant was not accepting responsibility for the damage? Green said nothing to plaintiff about Campbell being responsible for the fire. Is it conceivable that defendant did not tell him if it were true that Campbell was responsible? Defendant did say in answer to a question in regard to why he wanted an independent valuation made of the damage by Mr. Green, that Green went to do so as Green had said he wanted to see if any settlement can be made between defendant and plaintiff, that is why he went; that he had told Green he defendant was not responsible for any fire. Green never said anything about this at any time to the plaintiff.

The whole tenour of Green's evidence is that the question of liability on the part of defendant was not in question. What was is whether:

- (a) plaintiff could get the roadway as compensation;
- (b) where the roadway should be laid. Indeed Mr. Green stated that when Hyde came to see him he did understand that this question of the roadway was compensation for the damage that had been done to his (plaintiff's) farm, that his reply to plaintiff was an implied promise that the compensation in that form would be given

serious consideration.

Yet, up to the time, not one word is said about Campbell to the plaintiff by either defendant or Green.

The conduct of defendant and Green strengthens me in the view that defendant is not a witness of truth and I reject his evidence in this regard and accept the evidence of the plaintiff and his witnesses. As for Campbell's evidence, I find that he is untruthful and wholly unreliable and a person who would go to any lengths, and did, to help the defendant. I reject his evidence in toto. I find therefore, that the defendant is wholly liable for the fire and the consequent damage to plaintiff's land.

DAMAGES

McTaggart in his evidence stated he valued the damage in the presence of defendant and two ladies defendant brought as checkers. His valuation follows:

273 Pimento Trees totally destroyed - burnt by fire @ \$60 per tree	\$ 1638.00
33 Citrus trees @ \$30 per tree orange and tangerine	990.00
10 lumber trees	
5 Mahogany @ \$20 per tree \$100	
5 Bullet @ \$15 per tree <u>\$ 75</u>	175.00
50 square chain of grass @ \$1.50 per square chain	75.00
Fees	40.00
	\$ 17,660.00

The questions to be resolved are the number and type of trees:

- (a) totally destroyed
- (b) partially destroyed, and
- (c) value of trees - totally or partially destroyed.

The defendant admitted he was present and was accompanied by two women, his tenants. That Mc Taggart check and count up the trees burnt. He, however, stated that McTaggart checked:

- (1) Pimento trees - these have since died.
- (2) Mahogany trees, only the leaves were scorched - that these have since recovered;
- (3) two citrus trees i.e. one orange and one tangerine. the orange have died, the tangerine tree just quailed up from the effect of the fire;
- (4) saw no bullet tree there;
no grass was burnt.

Defendant stated he had the two women one Gilzine and one Joyce Bennett as witnesses, so they could check too; that while McTaggart counted, they counted too. That after McTaggart counted, McTaggart said 'Tally' and they said 'Tally' too. That after they done count they added up and they checked with one another and see if they got the same thing. That they got the same thing. That as far as the counting is concerned McTaggart and his two ladies agreed on the spot.

Despite this, defendant called two witnesses in regard to the damage. Mr. Green and Mr. Bennett. Mr. Green, in his evidence, stated that plaintiff's land before fire was a steep hill and vegetation was ferns, shrubs i.e. undergrowth, pimento trees, few citrus and non-descript timber trees, and no grass; that the majority of pimento trees were young; that the larger number were, non-bearing trees; and a few wild orange trees, no citrus grove was there. The land was not weeded. That he inspected the burnt area, some two to three weeks after the fire. He again returned to the burnt area in August, 1973, with a Mr. Bennett and he again visited the burnt area with a Mr. Bennett in 1974.

In August 1973, when he visited the burnt area some of the trees were springing back, they had not died. The two mahogany trees were springing back. A check was made of the trees that had died. In cross-examination he stated that it was not un-common to find 300-350 pimento trees on land such as the portion burnt in St. Ann. He also stated that two Bullet wood trees were growing on plaintiff's premises, of course, defendant said he saw none. In re-examination he stated that when he spoke of 300-350 pimento trees he meant that most of the trees would be the younger trees from seedlings.

The witness gave no evidence in relation to the number and type of trees that he saw totally destroyed, partially destroyed, or trees recovering from the fire. Aubrey Bennett gave evidence for defendant. He was a retired Forestry Officer, and worked for Kaiser

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Bauxite Company, doing valuation in regard to trees and forests. On 10th August, 1973, some four months after the fire which occurred on 7th April, 1973, accompanied by Mr. Green, he stated that he looked at the area damaged by bush fire and examined the trees. He stated that in his experience if there is a bush fire that involves trees, the minimum period to ascertain whether trees involved in such a fire are totally destroyed or merely damaged, would be a period of six months. That one cannot in a matter of three to four days of a fire conclude that these trees are totally destroyed. He then went on to describe the process involved in ascertaining whether a tree was totally destroyed or not. He stated that:

Trees damaged

- (1) Fimento Trees - Big and intermediate - excluding Saplings . . .
120-121 trees

(a) 60 female @ \$15 per tree	-	\$ 900.00
61 male @ \$1 per tree	-	\$ 61.00

These burnt and completely dead.

(b) Saplings - 89 @ \$2 per tree - \$ 178.00

- (2) Fiddlewood trees damaged - not destroyed

Damage valued at \$ 2.50 each	\$ 5.00
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(3) 1 sweet orange tree valued 10.00

(4) 1 tangerine tree valued 4.00

(5) 3 bitter orange trees @ \$3 each 9.00

(6) 2 mahogany trees @ \$ 3 each 6.00

(7) 1 yellow sander - no value.

On the evidence as to the total number of trees affected by the fire, i.e. whether totally destroyed or only partially damaged, I would accept McTaggart's evidence in this regard. The evidence is clear that the figures of trees damaged were agreed by McTaggart and the defendant's two checkers and I so find as a fact. I however would accept the evidence of Bennett that one cannot categorically say a tree affected by fire is dead by inspecting same a few days after the fire, and that a minimum of at least six months is needed to decide this conclusively. The difficulty that arises here,

however, is that Bennett, on his evidence, made his inspection some four months after, and this would to some degree affect the weight that can be placed on his evidence, in that he cannot categorically say ^{that} some trees that he concluded were dead, were in fact so, on the basis of his own criteria; undoubtedly, however, there would be positive evidence of life in some trees four months after the fire. To summarize therefore I find as a fact that 316 trees were affected by fire:

273 Pimento trees
33 Citrus trees
5 Mahogany trees
5 Bullet wood trees.

I also find as a fact that on 10th August, 1973, some of these trees affected by fire had recovered and the condition of the trees were as follows:

(1) Pimento Trees -

Wholly destroyed

60 Female

61 Male

89 Saplings

Total 210

(2) 5 Citrus trees

(3) 3 Lumber trees

(4) 2 Lumber trees partially destroyed.

I accept Mr. Bennett's evidence in this regard.

We come now to deal with the question of the value of the trees destroyed and in particular - Pimento trees.

The Court at this point would like to express its appreciation to Mr. John Gayle, Agronomist, from the Ministry of Agriculture, for his assistance to the Court. Great difficulties were experienced by the Court in understanding the basis of valuation of male and female pimento trees by both parties. Mr. Gayle was called by the Court

and his evidence on the method of propagation, maintenance and upkeep of a Pimento grove was very helpful and most instructive. Mr. Gayle's evidence in relation to value^{of} a bearing pimento tree is based on average yield per year. His evidence is:

" That the Ministry ran a research station in St. Ann area over a period of nine years. They took 35 trees and under ideal conditions of husbandry, found the average yield per tree per year, to be 29 lbs. green berries. When dried down, it came to about 12 lbs. dried pimento.

He further stated that usually you get a crop every 2-3 years. This depends on how you reap the tree the previous year. If you break the branches discriminately you can get a crop each year, but where, as in Jamaica, people just break branches, the tree takes at least a year to recover."

We have no evidence in the case of the average yield of these trees, but what is certain is that they were not growing in the ideal conditions as those at the Ministry's Research Section and this would affect the yield. Mr. Green and Mr. Bennett all give valuations in respect of a pimento tree as a pimento tree, female and male, some yield was assumed in respect of female trees, and none in respect of male. I shall abide by the method of valuation propounded by Mr. Gayle in placing what I consider to be a reasonable valuation on the pimento trees and which in my view coincides with McTaggart's method of valuation of bearing trees.

In his evidence, Mr. McTaggart said he was not able to distinguish which of the burnt trees were male or female, yet he valued each tree to be \$60. His basis of valuation is that even if the tree produces 10 lbs. per year, it would cover a value of more than \$60, because the tree would still be alive. Yet he stated that he knows that the P.W.D. and J.F.S. give compensation for pimento trees cut down to clear their lines and that this compensation varies between \$10-\$15 and sometimes less for a tree. I do not accept Mr. Bennett's valuation at \$15 per female tree. It is too low.

I would place a valuation of \$25 per tree, which I consider reasonable in the circumstances. I accept Mr. Gayle's evidence that a male tree is valued about one third of value of a female tree. I would, therefore place a value of \$8.50 on mature male trees and I accept the value of Mr. Bennett of \$2 per Sapling. I would accept McTaggart's valuation of citrus trees at \$30 per tree i.e. orange and tangerine; and I would place a value of \$10 per tree in relation to the bitter orange tree. I would place a value of \$50 per tree on the mahogany trees.

In connection with the claim for grass, I am of the view that this claim cannot be supported. Mr. McTaggart stated in cross-examination that he saw grass on going into the land; that he can see where grass burnt it was not pure stone. That he know that grass was growing at that part that was burnt, because he has never seen any land without grass, unless it was burnt off.

It seems McTaggart is merely making assumptions and I cannot rely on his evidence in this connection. I do not accept that the land was maintained as pasture land; and the subject of good husbandry. I accept and so find that the land was un-attended and whatever bore fruit on it was merely reaped. I would therefore make no award in respect of grass. There will therefore be judgment for plaintiff and I would award damages as follows:

60 Female	@	\$25 per tree	\$1,500.00
61 Male	@	\$8.50	518.50
89 Saplings	@	\$2	178.00
1 sweet orange	@	\$30	30.00
1 tangerine	@	\$30	30.00
3 bitter orange	@	\$10 per tree	30.00
2 mahogany tree	@	\$50 per tree	100.00
			<u>\$2,386.50</u>

With costs to be taxed or agreed.