

1964  
Nov. 5

[VASSILIADES, TRIANTAFYLIDIS AND MUNIR, JJ.]

CHRISTOFOROS  
DEMETRIOU  
v.  
MANOLIS  
NICOLA

CHRISTOFOROS DEMETRIOU,

*Appellant,*

v.

MANOLIS NICOLA,

*Respondent.*

(Criminal Appeal No. 2738)

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*Criminal Law—Trespass by animals—The Rural Constables Law, Cap. 287—Prosecution under section 34 thereof—Contention of duplicity of charge—Observations as to sentence—Observations as to the object and scope of prosecutions for offences under section 34 (supra)—The Rural Constables Law, Cap. 287 (supra) section 34 (1) proviso, section 35, section 36 et seq.*

*Criminal Procedure—Charge—Duplicity—Prosecution under section 34 of Cap. 287 (supra)—Two distinct offences: (1) Trespass by animals (2) Causing damage thereby—A count charging trespass by animals is not bad for duplicity merely because reference to the damage caused thereby is made in the particulars of the aforesaid charge—Especially in view of the provision in the same section giving power to the court to award compensation by way of damages in such cases.*

Section 34 of the Rural Constables Law Cap. 287 provides :

34. (1) “ If any animal is found trespassing on any sown or cultivated land or in any vineyard or garden, or damaging the property of any person both the owner of the animal and the person (if any) in whose charge it was at the time of committing the trespass or damage shall be guilty of an offence and on conviction thereof shall be liable to a fine not exceeding two hundred and fifty mils in respect of each such animal, and every court of competent jurisdiction before which any person charged with such offence is being tried shall have power to award such compensation by way of damages as the court think fit :

Provided that, save as otherwise in this Law provided, nothing in this section contained shall prevent any proceeding by action before a court of competent jurisdiction in respect of trespass or damage by any animal.

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(2) Every prosecution under this section shall be instituted by the person injured by the act complained of or by a Superintendent, in his discretion, upon the complaint of such person. No court fees shall be charged in respect of any prosecution under this section.

(3) In every prosecution under this section the onus of proving that the act complained of has been done with the permission or consent of the person entitled to give such permission or consent shall lie upon the accused.”.

The respondent prosecuted the appellant for grazing the latter's flock of goats, in a barley-crop belonging to the prosecutor and causing £2 damages. The appellant was charged with two offences : Trespass by animals, contrary to section 34 of Cap. 287, and causing £2 damage to complainant's barley-crop, by such trespass, again contrary to the same statutory provisions.

At the close of the case for the prosecution the learned trial Judge called upon the appellant on the first count ; and at the conclusion of the trial, convicted him accordingly dismissing the second count as alternative. The appellant was ordered to pay £2 compensation to the complainant and £6 costs. He appeals against the said conviction and order on the ground, *inter alia*, that the charge on which he was convicted is bad for duplicity.

*Held*, we find no substance in this contention. Reference to the damage is made in the particulars of the offence of trespass, charged in the first count. And in view of the provision giving power to the court in the same section to award compensation in such cases, by way of damages, we cannot find any merit in this ground of the appeal.

*Appeal dismissed.*

*Per curiam* : One must bear in mind that the offences in section 34 were obviously made part of the Rural Constables Law, in order to afford protection to cultivations against trespass and damage by animals, in a manner more easily accessible to persons living in villages. And apparently to give to the complainant in such cases, a more handy and less expensive remedy than a civil action for trespass (*Vide* proviso to section 34 (1) ; and section 35, section 36 *et seq.*). They are not part of the criminal law codified in Cap. 154 where criminal trespass and malicious offences are of a different nature to the offence in the present charge.

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*Per curiam* : Before leaving the case, we feel that we must observe that after the learned trial Judge's remarks before sentence, that "this is a very prevalent offence and it is the duty of the court to see that the property of others is respected", we would expect to see at least part of the fine of "0.250 mils in respect of each animal" provided by the section, imposed. In a case of grazing with a flock of 68 goats (the figure given by accused in his evidence) for about 30 minutes in a barley-crop, which trespass the accused completely denied, thus causing the litigation in hand, speaking for myself I must say that I cannot see an adequate sentence in an order for the payment of the compensation for the damage done to the crop, and the costs incurred in the prosecution, without any fine at all. There being, however, no appeal against sentence, the matter, in this case, will be left at that.

#### Appeal.

The appellant was convicted on the 4th September, 1964, at the District Court of Larnaca (Criminal Case No. 685/64) on one count of the offence of trespass by animals contrary to section 34 of the Rural Constables Law, Cap. 287 and was ordered by Orphanides, D.J. to pay £2 compensation to the complainant and £6 costs.

*L. N. Clerides*, for the appellant.

*Respondent*, appearing in person.

The judgment of the court was delivered by :

VASSILIADES, J. : This is an appeal from a conviction and order awarding £2 compensation and £6 costs of prosecution, in a case of trespass by animals, instituted under section 34 of the Rural Constables Law (Cap. 287). The respondent prosecuted the appellant for grazing the latter's flock of goats, in a barley-crop belonging to the prosecutor, and causing £2 damage.

The appeal is made on the three grounds set out in the notice prepared by counsel. They are, shortly, these :

1. The charge on which the appellant was convicted, is bad for duplicity ;
2. The evidence is not sufficient to support the conviction ; and
3. The trial Court misdirected itself as to the onus cast on the accused in connection with the interest of the complainant in the damaged property.

The prosecution was in the hands of an advocate who signed the charge for the complainant. It charged the appellant with two offences : Trespass by animals, contrary to section 34 of Cap. 287 ; and causing £2 damage to complainant's barley-crop, by such trespass, again contrary to the same statutory provisions.

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At the close of the case for the prosecution the learned trial Judge called upon the appellant on the first count only ; and at the conclusion of the trial, convicted him accordingly, dismissing the second count as alternative.

The contention on behalf of the appellant in this court, is that the first count is bad for duplicity, because it charges the two offences, trespass and damage, in the same count.

We find no substance in this contention. Reference to the damage is made in the particulars of the offence of trespass, charged in the first count. And in view of the provision giving power to the court in the same section to award compensation in such cases, by way of damages, we cannot find any merit in this ground of the appeal.

One must bear in mind, in this connection, that the offences in section 34 were obviously made part of the Rural Constables Law, in order to afford protection to cultivations against trespass and damage by animals, in a manner more easily accessible to persons living in villages. And apparently to give to the complainant in such cases, a more handy and less expensive remedy than a civil action for trespass (*vide* proviso to section 34 (1) ; and section 35, section 36, et. seq.) They are not part of the criminal law codified in Cap. 154 where criminal trespass and malicious damage to property are treated as rather serious offences of a different nature to the offence in the present charge.

As to the second ground, based on the sufficiency or alleged insufficiency of the evidence on which the trial Court found that the respondent had a legal interest in the damaged crop, entitling him to prosecute, we think that the evidence of the Rural Constable called for the prosecution, as amplified by his answers to questions put to him in cross-examination, contain ample material on which the trial Judge could find as he did. The evidence of this witness, which was fully accepted by the court, not only shows sufficiently, for the purposes of a case of this nature, that the person who suffered damage by the trespass was the prosecutor, but also shows that the appellant was fully aware of the position, at the time of the offence.

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The witness stated that when the complainant informed him that he had acquired the grazing rights of that barley-crop, from the owner of the land, the witness, being the Rural Constable responsible for the area, not only verified this position, from the proprietor of the land, but also informed the appellant-shepherd about it, two or three days before the offence.

As regards the third ground on which this appeal is based, that the trial Judge's reference in his judgment, to the onus cast on the appellant to prove permission or consent, contains a misdirection, we think that this ground is also devoid of substance. It is quite clear to us that what the learned judge had in mind was sub-section (3) which provides that in every prosecution under section 34, the onus of proving that the act complained of has been done with permission or consent, lies upon the accused. Here the case of the appellant was that he did not commit the trespass or cause the damage. He never alleged permission or consent ; he completely denied the trespass. But as part of the cross-examination was directed to the fact that the land belonged to a third person, the judge pointed out in his judgment that in any case the appellant would have to prove permission or consent from such a person, to justify the grazing of his flock on the land in question.

For these reasons we think that the appeal must fail. But before leaving the case, we feel that we must observe that after the learned trial Judge's remarks before sentence, that " this is a very prevalent offence and it is the duty of the court to see that the property of others is respected ", we would expect to see at least part of the fine of " 250 mils in respect of each animal " provided by the section, imposed. In a case of grazing with a flock of 68 goats (the figure given by accused in his evidence) for about 30 minutes in a barley-crop, which trespass the accused completely denied, thus causing the litigation in hand, speaking for myself I must say that I cannot see an adequate sentence in an order for the payment of the compensation for the damage done to the crop, and the costs incurred in the prosecution, without any fine at all. There being, however, no appeal against sentence, the matter, in this case, will be left at that.

*Appeal dismissed.*