

GAAMEW, Appellant

v.

YOU, Appellee

Civil Action No. 19

Trial Division of the High Court

Yap District

August 6, 1959

See, also, 2 T.T.R. 264.

Action to recover damages allegedly caused to plaintiff's crops by defendant's cow. On appeal from Yap District Court judgment for plaintiff, the Trial Division of the High Court, Chief Justice E. P. Furber, held that evidence in record was insufficient to support judgment as to amount of damages and that new trial would be granted to allow both sides to cover issue more fully by evidence.

Remanded.

1. Civil Procedure—Parties Without Counsel

Although party has right to proceed without counsel if he desires, he has obligation to make honest and sincere effort to comply with requirements of law and practice so far as he knows them or has them brought to his attention by court.

2. Civil Procedure—Parties Without Counsel

Party proceeding in court without counsel has obligation to be respectful and reasonably considerate of court and should not substitute repeated argument for proof.

3. Civil Procedure—Generally

Courts in Trust Territory should modify usual trial procedure when substantial justice so requires.

4. Civil Procedure—Parties Without Counsel

When party proceeds in court without counsel or with inexperienced counsel, court should see that party is not prevented by ignorance or inadvertence from introducing important evidence readily available to him.

5. Civil Procedure—Parties Without Counsel

Adherence to usual trial procedure should not prevent introduction of evidence after usual time for it if court is convinced party who is proceeding without counsel or inexperienced counsel is honestly endeavoring to proceed as properly as he knows how.

6. Civil Procedure—Damages

Defendant in civil action is entitled to have matter of damages introduced in usual way and with full right of cross-examination even if admitted later than usual.

GAAMEW v. YOU

<i>Assessor:</i>	JUDGE FALYOOR
<i>Interpreter:</i>	FEICHIN C. FAIMAU
<i>Counsel for Appellant:</i>	LINUS RUUAMAU
<i>Counsel for Appellee:</i>	Appellee acted for himself, assisted by JOHN A. YGUMMANG

FURBER, *Chief Justice*

This is an appeal from a judgment in favor of the appellee for damages alleged to have been caused to his crops by the appellant's cow.

ISSUES INVOLVED

Most unfortunate arguments and misunderstandings about procedures arose in the trial of this case in the District Court.

The plaintiff You insisted on his right to act without counsel in spite of the suggestion of the court that he try to get counsel. It is obvious from the record that he did not understand how to prove a case, and that in effect he persisted in asking the court to accept his statements of claim and arguments in place of testimony.

The defendant Gaamew on the other hand, through his counsel, was insistent in trying to have the court stick to the usual trial procedure.

The trial judge seems finally, in an attempt to do substantial justice, to have considered at least in part as proof a written statement submitted by the plaintiff in answer to the defendant's motion to dismiss.

CONCLUSIONS OF LAW

[1, 2] 1. It is correct that a party has a right to proceed in our courts without counsel if he so desires, but if he does this he has an obligation to make an honest and sincere effort to comply with requirements of our law and practice so far as he knows about them or has them brought to his attention by the court, and also to be re-

spectful and reasonably considerate of the court. He should not try to substitute repeated argument for proof.

[3-5] 2. On the other hand, both parties and counsel must recognize the obligation of the courts to try to do substantial justice within the limitations this imposes. Our Rules of Civil Procedure, in outlining trial procedure, expressly provide as follows:—

“The following shall be the usual trial procedure, which may be modified by the court to fit the circumstances of a particular case.”

The court not only may modify this procedure, but is expected to do so whenever it deems substantial justice so requires. When a party is proceeding without counsel or with inexperienced counsel, the court should be alert to see that a party is not prevented by ignorance or inadvertence from introducing important evidence that would appear to be readily available to him, and the usual trial procedure should not be adhered to so closely as to prevent the introduction of such evidence after the usual time for it, so long as the court is convinced that the party or inexperienced counsel is honestly endeavoring to proceed as properly as he knows how. This court feels that the trial court was fully justified in this case in refusing to dismiss the case at the request of the defendant merely because the plaintiff's evidence was incomplete as to certain elements of damage.

[6] 3. The defendant was entitled, however, to have this matter of damages covered by testimony introduced in the usual way and with the full right of cross-examination—even though it might have been admitted later than usual. Rather than accept as proof to any extent the plaintiff's written statement in answer to the motion to dismiss, the court should have reopened the case and required the plaintiff to present this matter through himself or others as a witness or witnesses. The action which the court

finally took may well be in accord with the requirements of substantial justice, but there is insufficient evidence in the record at the present time to support it. A new trial will therefore be granted, subject to certain directions, in order to allow both sides to cover this question of damages more fully by evidence.

4. Both sides are warned that at the new trial they should be more considerate of the position of the judge, and should both show a willingness to let the judge have the best available evidence on this issue of damages in order that he may arrive at as just a finding as possible.

JUDGMENT

1. The judgment of the District Court for the Yap District in its Civil Action No. 5 is set aside and the case remanded to the District Court for a new trial, subject to the following directions:—

(a) The judge who originally heard the case is to re-open it and permit both sides to introduce any proper evidence either so desires as to the question of just what crops of the plaintiff were destroyed or damaged by the defendant's cow or cows, and what the money value was of the crops so destroyed or the damage so done, but the court is to also consider all the evidence already in the record without its having to be reintroduced.

(b) The court is then to allow the usual opportunity for closing arguments and make a new judgment based on all the evidence both at the original trial and that introduced at the new trial, just as if no previous judgment had been rendered in the case.

2. No costs are assessed against either party in connection with this appeal.