

DOMINICA

IN THE COURT OF APPEAL

MAGISTERIAL CRIMINAL APPEAL NO. 31 OF 1991

BETWEEN:

CLAYTON DOUGLAS

Appellant

and

THE POLICE

Respondent

Before: The Honourable Sir Vincent Floissac - Chief Justice
The Honourable Mr. Justice Byron J.A.
The Honourable Mr. Justice Redhead

Appearances: R. Armour for the Appellant
D. Harris for the Respondent

1992: March 13,
Sept. .

J U D G M E N T

FLOISSAC, C.J.

Ethelbert Hamilton and the appellant were charged for conducting themselves in a disorderly manner (i.e. by fighting) on the 12th August 1991 in a public place (i.e. the Vieille Case Public Road) contrary to section 19(1) of the Small Charges Ordinance, Cap. 53 of the Revised Laws of Dominica 1961 as amended by Act No.13 of 1987. On the 19th August 1991, Magistrate D.G.Moise in the Magistrate's Court District G tried and convicted both defendants for the offence charged and imposed a fine of \$240.00 on each of them. Whereupon the appellant appealed against his conviction.

The question strenuously argued in this appeal is whether fighting in a public place can constitute an offence under section 19(1) if the fighting does not disturb the neighbourhood. The answer to that question depends on the proper interpretation of section 19(1) which provides as follows:

"Any person who, in any public place conducts himself in a

disorderly manner, or conducts himself in such a noisy manner as to disturb the neighbourhood, shall be liable to a fine not exceeding two hundred and forty dollars or to imprisonment for a term not exceeding one month."

Counsel for the appellant submitted that the words "as to disturb the neighbourhood" qualifies the phrase "conducts himself in a disorderly manner" as well as the phrase "conducts himself in such a noisy manner". According to counsel, conduct in a disorderly manner in a public place does not constitute an offence under section 19(1) unless such conduct disturbs the neighbourhood.

In support of his submission, counsel for the appellant relied on two cases which are cited in "Words & Phrases Legally Defined" (2nd Edition) and where the meanings of the words "disorderly" and "disorderly conduct" are considered. The first case is the Scottish case of **Campbell v Adair (1945) S.C.(J) (29)** where the word "disorderly" was used in the context of section 135(5) of the Glasgow Police Act 1866 whereunder an offence is committed by every person who is "riotous, disorderly or indecent in his behaviour." There, **Lord Moncrieff** said:

"The question is whether he himself acted in a manner which can be described as disorderly. I find it very significant that the order of the omnibus appears to have been disturbed at least in one particular, because an independent witness is stated by the Sheriff to have been so disgusted at the conduct of the driver and of the appellant that he left the omnibus before reaching his destination
..... Now, it is not necessary to find that all the persons observing a disorderly act are equally disturbed. The other passengers appear to have maintained their places. People vary in their sensitiveness and in their reaction to such events. But in considering whether the learned Sheriff had material upon which to proceed, I consider that this action on the part of an

independent witness afforded him material which was not only highly relevant, but which, as taken along with the other circumstances which attended the incident, satisfies me that this determination by the Sheriff cannot be reviewed on the footing that there was no sufficient evidence to support the finding."

The second case is the New Zealand case of **Melser v Police (1967) N.Z. L.R.437** extracts of the judgments wherein are cited without the benefit of the statutory context in which the words "disorderly conduct" were used. There, **North P.** said at p.443:

"I am of opinion that not only must the behaviour seriously offend against those values of orderly conduct which are recognised by right-thinking members of the public but it must at least be of a character which is likely to cause annoyance to others who are present."

Turner, J. said at p.444:

"Disorderly conduct is conduct which is disorderly; it is conduct which, while sufficiently ill-mannered, or in bad taste, to meet with the disapproval of well-conducted and reasonable men and women, is also something more - it must, in my opinion, tend to annoy or insult such persons as are faced with it - and sufficiently deeply or seriously to warrant the interference of the criminal law."

McCarthy, J. said at p.446:

"There must be conduct which not only can fairly be characterised as disorderly, but also is likely to cause a disturbance or to annoy others considerably. As Turner, J. has already said, in the ultimate the question is one of degree."

These cases indicate that it is an essential ingredient of the offence of disorderly conduct by one person that the conduct is likely to cause disturbance or annoyance to another person. These

cases emphasise that the essential ingredient is the likelihood and not the fact of disturbance or annoyance. The likelihood of disturbance or annoyance may be proved by actual or factual disturbance or annoyance, but it may also be established inferentially from circumstances which generate such likelihood. Section 19 itself abounds with illustrations of those circumstances which include the place where, the time when, the manner in which and the person against whom the conduct is directed and in the case of noise, the degree of the intensity thereof.

In the case of a fight on a public road, the likelihood of disturbance or annoyance to an eyewitness may be proved by evidence that the eyewitness was actually annoyed or disturbed by the fight or may be proved by inference from the fact that the eyewitness witnessed a fight on a public road. In my opinion, evidence that a police constable witnessed a fight on a public road and arrested the combatants therefor is sufficient evidence of the likelihood that he was disturbed or annoyed by the fight. In the present case, the likelihood of disturbance or annoyance was proved by the evidence of P.C. George Diggs who testified that he saw the fight and arrested the combatants (Hamilton and the appellant) and whose evidence was believed by the learned magistrate. **Campbell's Case** and **Melser's Case** therefore do not assist the appellant.

However, the submission of counsel for the appellant goes beyond the principle enunciated in **Campbell's Case** and **Melser's Case**. The submission is that conduct is not disorderly unless it disturbs the neighbourhood. The submission necessitates the insertion of the word "such" before the words "a disorderly manner" appearing in section 19(1) and the rearrangement of the punctuation marks in that section. The question therefore arises as to whether in this case, it is necessary to do so to give effect to the legislative intention or whether to do so would transcend judicial statutory interpretation and would amount to legislation under guise of interpretation.

The function of the court in relation to a statute is to interpret the statute by ascertaining the legislative intention in regard thereto. That legislative intention is an inference drawn from the primary meanings of the words and phrases used in the statute with such modifications of those meanings as may be necessary to make them consistent with statutory context. Those words and phrases, the punctuation marks used and the structure of the sentences in the statute are among the components of the statutory context by reference to which the legislative intention is required to be ascertained or the words and phrases are required to be interpreted.

The evident intent of section 19(1) is to create two separate offences of disorderly conduct namely (1) disorderly conduct by behaviour in a disorderly manner in a public place and (2) disorderly conduct by behaviour in such a noisy manner as to disturb the neighbourhood. The first two commas of section 19(1) were evidently inserted by design and not by accident or in error. If numerals (which are legitimate substitutes for commas) were substituted for the first two commas in section 19(1), the subsection would read: "Any person who (1) in any public place conducts himself in a disorderly manner or (2) conducts himself in such a noisy manner as to disturb the neighbourhood, shall be liable to a fine.....".

Further we cannot ignore the conjunctive correlation between the adjective "such" and the words "as to disturb the neighbourhood". The adjective "such" has been used to qualify the words "noisy manner" and thereby to effect a conjunctive correlation with disturbance of the neighbourhood. Significantly, that adjective has not been used to qualify the words "disorderly manner" so as to connect or correlate conduct in a disorderly manner in a public place with disturbance of the neighbourhood.

For these reasons, we reject counsel's submission and dismiss
this appeal.

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SIR VINCENT FLOISSAC
Chief Justice

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C.M.D.BYRON
Justice of Appeal

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A. REDHEAD
Justice of Appeal (Ag.)