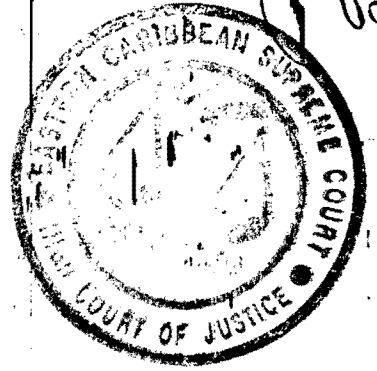


SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CASE NO. 97 of 1993



BETWEEN:

ALBERT BROWNE of Cane Hall

PLAINTIFF

AND

ORMOND WILLIAMS of Queen's Drive

DEFENDANT

Mr. A. F. Williams for the plaintiff
Mr. P.R. Campbell for the defendant

15th October, 1997
Delivered 6th November, 1997

JUDGMENT

BAPTISTE J.

This is a case in private nuisance brought by the plaintiff wherein he testified that all the water from the defendant's land is channelled into his land thus occasioning damage to his land. The plaintiff alleges that the water devalues his land, forms holes and ditches all along the way and flooded the downstairs of one of his properties. Further the water affects his savannah, lawn and plants. As far as the savannah is concerned it impacts negatively on his cattle as they cannot graze properly because the mud from the water covers the grass especially in the rainy season. The plaintiff is therefore seeking a declaration, injunctive relief, damages and costs.

The defendant in paragraph 4 of his defence states:

"The plaintiff owns land which adjoin the defendant's lands. The topography of the land is such that the defendant has no control over the water that flows to the plaintiff's lands from the defendant's land or otherwise."

At paragraph 5 he states:

"The Defendant has dug drains at various points on his land to take and conduct water away from the plaintiff's land without causing damage. However

the plaintiff's lands lie on the bottom side of the slope below the defendant's lands, and the area being mountainous is characterised by large gorges which are made by the patch of the rain water through the defendant's lands and into the plaintiff's lands."

The facts as I find them are as follows;

The plaintiff and the defendant both live at Queen's Drive on the island of Saint Vincent and they both own land there. The defendant has one house on his land and the plaintiff has two. The defendant's land bounds with that of the plaintiff. The land in question is hilly. In fact the land slopes down with the defendant's land situated above that of the plaintiff. Above the defendant's land is a public road, the Queen's Drive main road. This public road has served as a vehicle for the transportation of rain water which has caused soil erosion on the lands in question. To counter the problem of soil erosion, a system of contour grass barriers was instituted by the Ministry of Agriculture. However the contour grass barrier on the plaintiff's land was destroyed by the plaintiff's brother to facilitate the potato crop. There are a number of gullies and gorges as well as natural springs on the land of the plaintiff and defendant. The plaintiff's land has suffered erosion over the years.

According to Clerk and Lindsell on Torts:

" A private nuisance may be and usually is caused by a person doing on his own land, something which he is lawfully entitled to do. His conduct only becomes a nuisance when the consequences of his act are not confined to his own land, but extend to the land of his neighbour by ... causing physical damage to his neighbour's land or building or works or vegetation upon it ... " [See Clerk and Lindsell on Torts, 17 edition, para 18.05 page 891]

As we have seen, the plaintiff is alleging such physical damage to his land, building and vegetation. The plaintiff complains about the defendant domestic water, rain water from the defendant's roof and water from the defendant's land. He stated that there is a drain on the defendant's land that takes the water from the defendant's land and directs it into his land.

In his evidence the defendant stated that:-

"... my house has two floors. A ground floor and a first floor. The house is about 60 feet by 54 feet. It is el shaped. To avoid the water flowing into Mr. Browne's area, the water was put away from Mr. Browne's land and more towards Mr. Sylvesters land. There is a soak-a-way. It is built with blocks with steel reinforcement and rabacca and quarry waste. It is about 50 feet long. It is on the lower side of the house. I have no guttering. The water from my roof falls onto a concrete terrace. It flows very lazily on to the soak-a-way. The system was so constructed to prevent the water from going downhill. On the

eastern side there is a drain. The whole rationale of a head drain is to trap the water from the top of the land. It traps or channels the water. Some of the water permeates. I had a head drain built on my land. It was flowing from south west to north east. My head drain went straight down into the interlock drain. What the plaintiff said is incorrect. My drain did not lead to his land."

The defendant appeared to me to be a credible witness and gave his evidence in a frank and convincing manner.

The defendant further testified:

"I observed that when the water came from the road to Mr. Sylvester's land, the furrows - each furrow is a potential drain - from these furrows the water was channelled into my land, then my land was used as a conduit to transport the water to Mr. Browne's land during rainfall. The drain helped to ward off some of the water."

The defendant further deposed that he has no tenants, his family consisted of one person, only himself and since about 1980 he had been living on his own. He did not have a domestic helper. The water from his domestic activity went into the soak-a-way and to Mr. Sylvester's side.

I accept the evidence of the defendant and hold that the defendant has done nothing on his land so as to constitute a nuisance. I also hold that the topography of the area is such as to facilitate the erosion of the land by rain water. The removal of the contour grass barrier from the plaintiff's land would not have helped the situation. I am also of the view that the defendant did all that was reasonable in the circumstances to control the water on his land.

Considering that the very essence of private nuisance is the unreasonable user by a man of his land to the detriment of his neighbour, I can find nothing in the user of his land by the defendant which could be described as unreasonable.

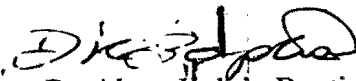
As stated in Clerk and Lindsell on Torts 17th edition, para 19.27 and para 19.28:

"Liability in respect of water depends on whether the water is naturally on the land or whether it is artificially accumulated or interfered with in some way. The owner of land on a lower land cannot complain of water naturally flowing or percolating to his land from a higher level. Nevertheless, the higher proprietor is liable if he deliberately drains his land on to his neighbour's land, and this appears to be so if the water is caused to flow in a more concentrated form than it naturally would as the result of artificial alterations in the levels and contours of the higher land."

"Although the lower proprietor cannot complain of the natural unconcentrated flow of percolating water from a higher land, "he may put up barriers and pen it back, notwithstanding that doing so damages the upper proprietor's land, at all events if he uses reasonable care and skill and does no more than is reasonable necessary to protect his enjoyment of his own land. But he must not act for the purpose of injuring his neighbour."

From the evidence I am satisfied that the plaintiff has not made out a case in private nuisance against the defendant. The defendant has not deliberately or recklessly used his land in a way which he knows will cause harm to the plaintiff and which could constitute an unreasonable infringement of the plaintiff's interest in his property, and therefore an unreasonable user by the defendant. On the contrary the defendant has taken all reasonable steps to prevent his water flowing on to the plaintiff's property. I conclude that the water damage would be caused by water naturally flowing or percolating to the land of the plaintiff from a higher level.

In the circumstances, the plaintiff's claim is dismissed. Costs to be taxed in not agreed.


Davidson Kelvin Baptiste
High Court Judge (Ag.)