

The facts of the case are that the plaintiff/respondent who lives at Sion Hill, and the defendant/appellant were in court on the 15th of September, 1969. Apparently there was bad blood between them. After the case was over the plaintiff/respondent went home, and when he got there he found that the glass windows of his house were broken and a partition made of hardboard had holes in it. All the glass panes of the windows were damaged, the exact number was twelve. He got an estimate of the cost of replacing the glass panes and repairing the damage, and that estimate amounted to \$53.40. He made it quite clear that when he left home that morning to go to court his house was undamaged.

It is quite clear then from the plaintiff/respondent's evidence that he did not see the defendant/appellant damage his house, but a witness, Ferdinand Ballantyne, said on that day when he was passing Sion Hill about 11.15 a.m. he saw the defendant stoning a house at Sion Hill. He saw him pelt two stones then he went back under his own house and took up two more stones and again pelted them at the house. He did not know at the time whose house it was the defendant/appellant was stoning, but he later found out that it was the man Cupid's house. He said the glass windows of the house were broken and he heard the defendant/appellant say, "if I can't catch him one way, I will get my revenge the next." That was the case for the plaintiff/respondent as put before the magistrate.

The defendant/appellant denied doing any damage. He said he came to court about 9.30 a.m. and at 12 noon he had a fight with the plaintiff and he took a car and reached Sion Hill about 12.30 p.m. and was at Dudley Clark's shop when the police came and arrested him and charged him for disorderly behaviour. That charge apparently was the subject matter of different proceedings, but in relation to the present proceedings he said: "I did not throw stones after I left court; I did not throw any stones at Cupid's window."

In his cross-examination he again emphasised that he did not attack Cupid and he did not stone Cupid's house. He called a witness, Cedric Davy a police constable, but he did not assist the Court in any way and all that he could speak about was an incident which took place at Sion Hill at about 1.00 p.m. where he met the appellant and the respondent and one Ballantyne fighting and he arrested all three of them. He

/said on that

said on that occasion he saw no one throw any stones. Well, it is not alleged that anybody was throwing stones at 1 o'clock. In any event all that the constable was concerned about was the breach of the peace caused by the fight between these three men. Counsel for the appellant has urged that the conflict of evidence in this case as to the time when the alleged stoning of the respondent's house took place was so great that the magistrate could not properly have directed his mind to the evidence, and consequently his decision was against the weight of the evidence. I am afraid I do not agree with him. Admittedly there is conflict in the evidence and it was the magistrate's duty to resolve the conflict. He saw and heard the witnesses. He saw their demeanour in court and he came to the conclusion that the case against the appellant was proved. He said in his Reasons for Decision:-

"The plaintiff was not present when the damage to his property occurred and his testimony merely described the damage he found when he returned home on the date in question. But there was an independent witness in the person of Ferdinand Ballantyne whose testimony I accepted. I found as a fact that Ballantyne did see the defendant throwing stones on the plaintiff's house and these stones broke some of his - the plaintiff's - glass windows."

Then he went on to say -

"I do not believe the account given by the defendant and after considering the evidence as a whole I found that the plaintiff had proved his case and I therefore entered judgment against the defendant."

I am in entire agreement with those findings of fact by the magistrate. The findings can be supported by the evidence which was before him and I would dismiss the appeal with costs agreed at \$15.00.

GORDON, C.J. (Ag.)

I agree.

(P. Cecil Lewis)
Justice of Appeal.

ST. BERNARD, J.A. (Ag.)

I concur.

(K. L. Gordon)
Acting Chief Justice

(E. L. St. Bernard)
Justice of Appeal (Ag.)