

The Defendant had been squatting in the area to the West of Lot 6 for some years. The number of years is in contention. He says that his aunt Sylvia Burgin squatted the land before him and kept pigs on the spot before he took it over and occupied it. The Defendant says that he first built a one room wattle and daub hut on the spot when he was 16 years old. He is now 34, he claims. He says that it was 1979 when he built the hut. He says it was about 1985 that he replaced it with the present chattel house. Under cross-examination he admitted that his aunt Sylvia had died before he built the hut. His cousin Leona Burgin tells us that her mother Sylvia died in 1983. She says that the Defendant is mistaken, as he had built his hut before her mother died. If I accept, as the Plaintiff urges, that the Defendant built the hut after Sylvia died, and if I accept Leona's evidence that Sylvia died in 1983, that would appear to put the lie to the Defendant's evidence that he built the hut when he was 16 years old, i.e. in 1979. 1979 is good for the Defendant's claim, 1983 is fatal to it. The Defendant says that his 2 children, one of whom is now 12 years old, were born in the chattel house he has now built to replace the hut.

The Plaintiff says that the Defendant did have a hut there for some years. But, he says the hut was outside of his boundary, on the 20 ft strip that is now reserved for the road. The Plaintiff says that it was only in about 1989 that the Defendant took down his hut and built a much larger chattel house that now extends over onto his land. The survey put in evidence shows that the chattel house straddles the South-West corner boundary, so that about one third of it is on Lot 6, one third of it is on the road reserve that constitutes the Western boundary of Lot 6, and one third of it is on the 20 ft road reserve that constitutes the Southern boundary of Lot 6. The chattel house of the Defendant being very small, the major part of the road reserves are still unobstructed by the house thus intruding into their space. The Court is faced with the dilemma that it is possible that the whole of the hut was originally on the road reserve, which would mean that no part of Lot 6 was occupied by the Defendant, and time did not begin to run against the Plaintiff until the larger chattel house was built to replace the hut; and it is possible that part or all of the original hut was actually built on what is now Lot 6, which would mean that time ran against the Plaintiff from the date the original hut was built. It is possible that the Defendant first squatted on part of the Plaintiff's Lot 6 in 1979, and it is possible that he first squatted it in or after 1983.

One of the exhibits put in by the Plaintiff is a letter written by the Defendant through his Solicitor to the Solicitor of the Plaintiff on 11th March 1994. It reads:

"I write on behalf of the defendant in the captioned matter (Re Suit No. 384 of 1993 - Godfrey Davis v Kendal Enville) to request an extension of time within which to remove the chatel house from the plaintiff's land. You will appreciate that it is no easy task to move a house of that nature after it has been there for so many years; Fourteen days is really an unreasonably short period of time. My client has diligently sought a new house spot, but these searches have been

unsuccessful as same are few are far between. Your co-operation will be greatly appreciated."

These possessory title cases are always very stressful to determine, especially when someone's home is involved. The Court looks carefully at the evidence for some clear indication of what the true facts are. Was the 12 year period satisfied? Is there clear evidence of exclusive possession? Can one find the necessary animus possedendi? Is the area claimed to have been possessed sufficiently clearly demarcated or fenced in? In this case, fortunately, there is clear evidence that the claim of the Defendant to possessory title is unsupportable. On this occasion, the complex issues of law and fact usual in these cases do not have to trouble the Court. The letter of the Defendant written to the Plaintiff after the issue of the Writ is the clearest possible evidence that in March 1994 the Defendant acknowledged the right of possession of the Plaintiff. If he had the intention then to claim the land he would never have written the above letter to the Plaintiff. The first time that the Defendant makes any claim to the possession of the spot of the Plaintiff's land on which a part of his house stands is in the Defence filed in May 1994, 2 months after the letter.

In the circumstances, I find that no extinguishment of the title of the Plaintiff or of his predecessor in title ever took place. I find for the Plaintiff, and I order that the Defendant do forthwith remove his chattel house from the Plaintiff's land, I grant the requested declaration that the Defendant is not entitled to build any house on the Plaintiff's land. I grant the requested injunction to restrain the Defendant whether by himself or his servants and or agents or howsoever from entering or crossing the Plaintiff's said land. On the question of damages, the Plaintiff has had to live with the Defendant's trespassing house not 6 ft from his own house. In addition to this intrusion, he will doubtless be put to expense and inconvenience in clearing up after the Defendant has removed his chattel house to another spot. The Plaintiff should be compensated for these intrusions and inconveniences, but the amount that would be fair is difficult to ascertain. I award an amount of \$2,500.00 damages for the trespass, and costs to the Plaintiff to be taxed if not agreed.



ID Mitchell, QC
High Court Judge (Ag)
May, 1997

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