SAINT VINCENT AND THE GRENADINES

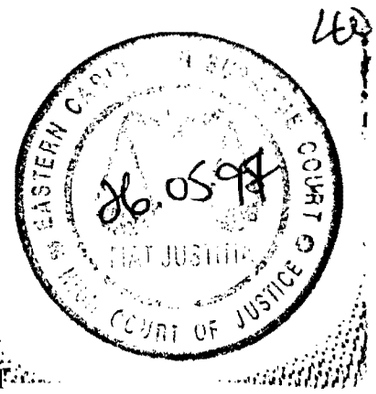
IN THE HIGH COURT OF JUSTICE

SUIT NO.: 405 of 1992

BETWEEN: DILLON JACK PLAINTIFF

V

VERNON BROWNE DEFENDANT



A Williams Esq for the Plaintiff
E Robertson Esq for the Defendant

Mitchell J.

JUDGMENT

This is a case of a claim for damages for forcible eviction. By a Writ of Summons endorsed with a Statement of Claim issued out of the Registry of the Supreme Court in St Vincent and the Grenadines on 28 October 1992 the Plaintiff Dillon Jack claims that he had been cultivating lands at Hopewell since 1956. He claims that on 19th September 1992 the Defendant Vernon Brown unlawfully entered the land and asked him to leave as he said he had bought the land. The Defendant assaulted the Plaintiff with a cutlass causing him injuries, pain and damages. The Plaintiff claims $18,650.00 damages for bananas, dasheen and yams he had growing on the land, and also general damages.

By a Defence filed with leave on 10 March 1995 the Defendant claims that he is the owner of the land in question; that at the time he went onto the land the Plaintiff was no longer in possession having left since he received a Notice to Quit dated 23 April 1991; that on the 19th September, the day in question, the Plaintiff trespassed on his said land and attacked him with a cutlass, and it was while the Defendant was defending himself that the Plaintiff received an injury; that a charge of wounding brought against the Defendant was dismissed in the Mesopotamia Magistrate's Court; that the subject matter of this case is res judicata; and that the bananas and other cultivation was abandoned and of no value. In reply the Plaintiff denies that he was given a Notice to Quit, that he had not given up possession but was at the time of the incident tending to his crops and animals, and that he was not a trespasser. The Request for Hearing was filed on 16th May 1995. The matter came on for trial on 21st May 1997.

The facts as I find them are that the Plaintiff Dillon Jack had since the year 1956 been put in possession on a share cropping basis of the 2 acres of land in question by one Gerald Miguel. Also working other lands of Mr Gerald Miguel nearby on a share cropping basis were Ben Simmonds and Chesterfield Alexander. The Plaintiff is a farmer, and he cultivated the 2 acres of the land allocated to him, sharing the crops and their produce first with Gerald Miguel and later

on the instructions of Gerald with Gerald's daughter Mrs Bacchus. Subsequently, Gerald Miguel conveyed, subject to a reserved life interest, a portion of his estate, including the land in question, to his son Joel Miguel and not to his daughter Mrs Bacchus. Gerald died in 1987, and within a few years Joel Miguel put up the lands at Hopewell cultivated by the Plaintiff, and other adjacent lands cultivated by Ben Simmonds and Chesterfield, for sale. After the death of his father, Joel Miguel spoke to the Plaintiff about receiving the share of the crops. The Plaintiff would not agree to pay him the half share, but insisted on dealing with Joel's sister Mrs Bacchus. As a consequence of this failure by Dillon Jack to acknowledge Joel's rights as owner, Joel claims he personally sent the Plaintiff a notice to quit in 1990, and then subsequently had a lawyer send another notice dated 23rd April 1991 to the Plaintiff and other share croppers on the land. The Plaintiff denies having received either of these notices. The notices were apparently sent by post, and I am not satisfied that the Plaintiff ever received either of them, but nothing in my view turns on this. As regards the half share, there was some difference of opinion among the witnesses. I find that by custom in the agricultural community a half share is 50% when the expenses of labour and materials are shared equally, and is 33.3% to the landowner and 66.6% to the share cropper when the sharecropper provides all the labour and materials. In the instant case I accept the evidence of Mr Joel Miguel and of the Plaintiff that the Plaintiff did all the work and provided all the materials

In 1991 Joel Miguel put up a sign on a tree to the effect that the lands were for sale. The Defendant is a successful farmer and learned that the lands were for sale. On about 4th September 1992 he purchased for some $66,000.00 with the assistance of a bank loan the portion of the lands in question cultivated by Dillon Jack from Joel Miguel. It was Joel Miguel's view that before the sale of the portion of the lands in question to Vernon Brown took place, the Plaintiff had stopped caring the land. He knows the other tenants had quit possession, but for the Plaintiff he can only say he never caught him there after the lawyer's notice. The Plaintiff's testimony is that to the contrary he never quit possession. His evidence is that he had growing on the land at the time of the incident on 19th September 1992 1800 holes of bananas valued at $10.00 per hole, 200 holes of dasheen valued at $2.00 per hole, 50 holes of Dominique yams valued at $4.00 per hole, and 30 holes of Moonshine yams valued at $2.00 per hole.

The Defendant's case is that the Plaintiff had chopped up and destroyed the plants and abandoned the cultivation after the notice to quit and before the Defendant bought the land, i.e. some 6-7 months before the incident in question. The Defendant's case is that for no apparent reason, after the Defendant had bought the land in question the Plaintiff returned to the site on 19th September 1992 when the Defendant was clearing with his cutlass some bush near the Plaintiff's old cultivation. He denies that the Plaintiff returned to the land because the Plaintiff was still working it. He only came back for trouble. The Plaintiff assaulted him with his cutlass when he told the Plaintiff that he had bought the land. He only defended himself, and in blocking the Plaintiff's cutlass from out of his face the Plaintiff accidentally got struck on his left

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shoulder with the Defendant's cutlass. The Plaintiff's evidence is that the Defendant deliberately planned him with the flat of his cutlass. A charge against the Defendant in the Mesopotamia Magistrate's Court for wounding the Plaintiff was dismissed. In cross-examination the Defendant denies that he beat the Plaintiff off the land with his cutlass.

Unfortunately for the Defendant his own testimony and that of his witness, as to whether Dillon Jack was still cultivating the lands in question after the notice to quit and the sale, weigh against him. Mr Joel Miguel admitted in his evidence that "After the April 1991 notice to quit I very infrequently visited the land. I noticed nobody working there. That is, I caught nobody working there. I know that Ben Simmonds left the land after the lawyer's notice. I did notice something was still going on on Mr Jack's land. But, there was no new cultivation." The Defendant admits that it was only after the incident on the 19th of September that the Plaintiff removed from the land his old shed and bucket and hoe that he used in his cultivation. That does not sound like the actions of someone who had long destroyed his crops and abandoned the ground he was working. It is significant that after the Defendant bought the lands from Mr Joel Miguel he made no effort to have the crops of the Plaintiff valued by an agricultural assessor, or to offer the Plaintiff an opportunity to reap his crops, or to pay the Plaintiff for them.

If a landowner uses unreasonable force to establish his ownership of his property, and ignores the rights of the previous cultivator of the property to the benefit of the crops growing there, he risks being ordered to pay compensation for the lost crops. If a land owner in enforcing his right of possession does not take steps to either agree with the cultivator previously lawfully in possession the value of the crops on the land, or to have an independent properly qualified or licensed assessor value the crops, then he risks the court accepting the valuation given by the Plaintiff. If a land owner uses unreasonable force to evict a trespasser from his property, he risks being ordered by a Court in a civil claim to pay compensation for any injury, pain and suffering. The fact that he has been acquitted of a criminal charge of wounding is not conclusive. The police have a different burden of proof to discharge, and they may for a variety of reasons fail so to do. I find in this case that the Plaintiff was mistaken in believing that he could deal with Mrs Bacchus and not with Mr Joel Miguel. However, I find that he has established that he was assaulted and injured by the Defendant in a trespass to his person. I also find that he is entitled to reasonable compensation for the crops he had growing on the land at the time he was chased off at cutlass point. I accept his valuation of the crops he had to leave growing on the land as being $18,660.00. I award the sharecropping two thirds value of the crops forcibly abandoned on the land in the amount of $12,440.00 to the Plaintiff, and I award the amount of $5,000.00 compensation for the cutlass planancing. Costs to the Plaintiff to be taxed if not agreed.

I.D. Mitchell
High Court Judge (Ag)
26th May 1997