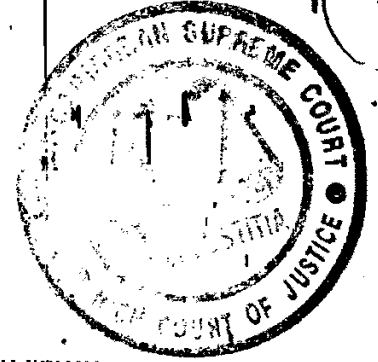


IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES
SUIT NO: 512 of 1994



BETWEEN:

VIBERT WILLIAMS of Kingstown Park

PLAINTIFF

AND

EARDLEY BUTE of Lowmans Hill

DEFENDANT

APPEARANCES:

Mr. Arthur Williams for the Plaintiff.

Mr. St. Aubyn Cato for the Defendant.

30th September, 1997
Delivered 9th October, 1997

BAPTISTE J.

JUDGMENT

On the 30th of September, 1997 I gave judgment for the plaintiff in a case in nuisance which he brought against the defendant. I now give my reasons.

The plaintiff is the owner of a house at Kingstown Park in St. Vincent and has been living in that house since 1962. The defendant is the owner of a house at Kingstown Park and lived there from 1964 to 1970. Sometime in 1992 the defendant effected some repairs to the house. He put on an outside bath. The defendant at present lets the house to a tenant. The defendant's house is located above the house of the plaintiff.

The plaintiff in his evidence stated that about six years ago, the defendant built a concrete gutter on his land to run his water from washing and from his bath along with water from the galvanize of his house and all this water comes down by him. The water came in his yard, sometimes under his house and the water dug up the yard. He had to concrete the yard and when the water was coming in the yard he wasn't able to walk there properly. The plaintiff stated that he spoke to the defendant about the matter but nothing was done. He also went to the Public Health Department on about three occasions.

In cross-examination the plaintiff said that he discovered that water was running from the defendant's land to his land when the defendant put a tenant to live there. Before that the defendant did not have a bath outside leading to his land. He further said that there was no drainage running from the house above his to his land.

In his evidence the defendant stated that there is a house above the plaintiff's house. That house is right next to his house and it is the nearest boundary to the plaintiff. There was a common drain between the boundary of the house above the land he was occupying and Mr. Williams land, that's the plaintiff's land.

Very importantly the defendant stated that he never had any complaints when he lived there. His mother lived there up to 1991 he visited her regularly and there was no complaint. His brother lived there up to July, 1991 and there was no complaint.

I find that from 1964 to 1991 the plaintiff never complained about a water problem on his land. It is not unreasonable to conclude that no such problem existed.

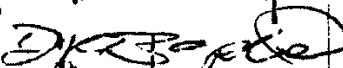
I accept the evidence of the plaintiff that he discovered that water was running from the defendant's land to his land when the defendant put his tenant to live there. Before the defendant did not have a bath outside leading to the land of the plaintiff.

It is interesting to note that the defendant himself said that it was since the tenant began living in the house that the plaintiff began to complain. The defendant explained however that the reason for the complaint related to a refusal on his part to let the house to the plaintiff after the plaintiff requested him to rent the house. I do not believe the reason advanced by the defendant. The plaintiff was more credible in his evidence.

I conclude that before 1991 there was no water problem on the land of the plaintiff. The water problem started about 1991 when the defendant let the house to the tenant. The defendant built an outside bath and a concrete gutter to run his domestic water and all that water came on the plaintiff's land and caused the nuisance complained about. I accordingly enter judgment for the plaintiff and make the following declarations:

- (1) The plaintiff is awarded \$500.00 in damages.
- (2) The injunction prayed for is refused.

The plaintiff is to have his costs. To be taxed if not agreed.


Davidson K. Baptiste
High Court Judge (Ag.)