ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 376 OF 1995

BETWEEN:

ERIC DAIZE

Plaintiff

and

ELFORD STEPHENS

Defendant

Appearances:

Ms Nicole Sylvester for the Plaintiff
Mr Colin Williams for the Defendant

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2000: June 26, 29

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JUDGMENT

[1] MITCHELL, J: This was a case of two private citizens disputing over possession of a piece of Crown land on the beach at Cumberland Bay in the island of St Vincent.

[2] By his Statement of Claim endorsed on his writ issued on 27 September 1995, the Plaintiff claimed to be in possession of a parcel of land at Cumberland Bay measuring 150 ft by 100 ft. He claimed that the Defendant had begun to fence the land and to build on it. The Plaintiff sought a declaration that the Defendant was not entitled to enter the land and an injunction to restrain the Defendant from further trespassing on it.

[3] By his Defence filed late by consent on 1 April 1997, after various interlocutory applications over an injunction, the Defendant pleaded as follows. The

government of St Vincent owned the land in dispute. The Dennie family had occupied it in part up to 1984. From 1994 the Honourable Jerry Scott and the Right Honourable Prime Minister, Sir James Mitchell, had put the Defendant in possession of the land. The Ministry of Agriculture, Industry and Labour, which Ministry is responsible for Crown lands, had surveyed the land in 1989. The land then measured 39,035 sq ft. Subsequently, the Defendant filled in swamp areas adjoining the land and the Ministry did a second survey in 1995. The total land had increased due to the filling in of the swamp to 47,314 sq ft. The Ministry had agreed to rent the land to the Defendant, who had since been paying rent to the Ministry. The Defendant had applied to the Ministry to purchase the lands, and his application is still pending. The Defendant has lived on the lands for some years now. The Defendant rejected the claims made by the Plaintiff.

[4] By a Reply filed on 29 May 1997, the Plaintiff asserted that at all times he had been in possession of a parcel of land measuring 150 ft by 100 ft. The Plaintiff claimed that up to 3 years previously the Defendant had lived at New Village and had only begun to squat on the land in 1988. That concludes the summary of the pleadings in the case.

[5] Giving evidence for the Plaintiff, in addition to himself, were his brother David Daize, his cousin Arthur Daize, and an ex employee of the Defendant, Wilbert Charles. Wilbert Charles was much the worse for having had a few drinks before he gave his evidence at 11.30am on the morning of the trial. The Daize brothers and cousin were weak on dates and areas of land and the reading of plans. The 58-year-old Eric Daize may just be able to read, but from the way he misinterpreted the plans put in evidence, his literacy is not at an advanced level. His brother David cannot read plans at all. Only the Defendant came to give evidence for his case. He claimed to be 51 years old, but appeared 20 years older. He could hardly stand up, and was allowed to sit through his testimony, cannot see to read, and was very hard of hearing. He was not a good witness, and took every opportunity to argue with counsel, despite several warnings from

the bench. He was truculent, ill mannered, abusive and unconvincing in giving his evidence. He behaved very badly in the witness box, and did not do justice to his case as pleaded. Put in evidence were three exhibits. These were the two surveys mentioned in the Defence above, and a copy of a Summons brought by the Attorney General against the Defendant in 1992 for unlawfully entering and continuing to remain on the Crown land at Cumberland and erecting a building on it. Each of the survey plans show 3 areas of Crown land situate between Dennie land and the beach at Cumberland Bay and numbered parcels No 1, No 2 and No 3.

[6] Sifting through the confused testimony of the witnesses, and examining the exhibits put in evidence, I come to the following findings of facts. The land in dispute always was and still is a part of a parcel of Crown land. Many years ago, the fathers of the current Daizes formed a company to do fishing and transporting of passengers by sea. The current Daizes who gave evidence all remember the company. Their fathers and uncles who formed the company called it Daize Brothers. This business began some time before and continued until shortly after the Second World War. The company bought a chattel house and put it on the area of Crown land now claimed by the Plaintiff to be occupied by him. There was no dispute with the Crown when they did this. The government used part of the building for a Post Office, and the visiting government doctor used a room of it as his surgery. There is no paper that the witnesses could remember that mentions the company, or that would help us to know whether it was a company registered under the Companies Act, or an unregistered company, or merely a firm. The cousin, Arthur Daize, was pressed into admitting that, if it was a company, it had to have been a registered company. This is a mistaken conclusion of law. The conclusion of fact the court was left to draw was, presumably, that since there were no papers produced, the company had to be a figment of the Plaintiff's imagination. But, I put no credence in any such suggestion. Given the rural setting, this company was highly unlikely to have been a registered company. I

am quite satisfied that some sort of company or firm existed, occupied a small portion of the Crown Lands in question, and has now ceased to exist.

[7] The Plaintiff testified that when he came back to St Vincent in 1977 after an undisclosed number of years abroad, his father had "given" him the land previously occupied by the company Daize Brothers. It is not clear what right the father had to "give" the Crown land to the Plaintiff. It is not clear what area the land was, nor what the Plaintiff used the land for, other than picking the ubiquitous fruit from the trees he found on the land. The Plaintiff, as we have seen, claims to be entitled to occupy an area of 100 by 150 feet, or 15,000 sq ft, almost a third of an acre. The exact boundaries of this alleged occupation by the Plaintiff has not been given in evidence, and appears never to have been surveyed. The Plaintiff identified on the 1989 plan in evidence a square marking as the area of parcel No 1 he claimed to have been occupying. I do not accept that interpretation put forward by the Plaintiff. The marking on the plan he identified as the area of land he occupied is in reality a surveyor's representation of the outline of a small structure. It is marked "D," according to the legend, to signify that it is a Daize structure. The area of the foundations shown on the plan and marked "D" is a tiny fraction of the 39,035 sq ft area of parcel No 1. If the foundations shown on the plan and marked "D" were really the area of 100 ft by 150 ft of land, then it would have been some 15,000 sq ft, or almost one half of the entire parcel No 1. The Plaintiff was clearly unable to read the plan and to identify on it the area where he claimed to have occupied, though he pored over the plan quite professionally for an extended period of time.

[8] The evidence for continuous possession of any specific area of land claimed by the Plaintiff over any particular period was poor. But, there was no denying the sincerity of the witnesses, including the alcoholic Mr Chambers, that the witnesses had understood the Plaintiff to have gone onto the Crown land in question in the year 1977 when he had been "given" it by his father under some right, real or imagined to have been inherited from the Daize Company, and in 1988 to have

built up the foundations of his "boathouse" on the site where the old house of the Daize Brothers had been before the War. The Defendant denied it, but the evidence is that the Plaintiff built the foundations, or "basement" as he called it, of his "boathouse" on a part of parcel No 1 in about the year 1988. The structure appears on the plan done in 1989 by the Ministry of Agriculture and put in evidence. The Plaintiff does not claim, as the Defendant does, that he possessed all of parcel No 1 on the plans. By the date of the 1995 plan, parcel No 1 had grown in size to some 47,314 sq ft, or almost one acre. The Defendant claims that his filling in a pond or swampy area between his holding and the sea caused this increase. That may be so. It appears equally likely, from looking at the plan, that the acquiescent government surveyors felt compelled to move the boundary line of parcel No 1 onto the government beach to be able to enclose within the parcel the new buildings that the Defendant had by then constructed on the beach and outside of the original boundary line of parcel No 1.

[9] Shortly after the Plaintiff commenced building his "boathouse" on the Crown land he was stopped by a government agency. The Plaintiff claimed he was stopped because he did not have planning permission. There is no corroboration of his story that the government stopped the building of the "boathouse" because he lacked planning permission. It may have been so. It is possible to speculate that there were other equally likely reasons why the government should stop the Plaintiff from building without permission on prime Crown beach land. This is especially so when one considers the action taken by the Crown against the Defendant up to the year 1992. All that is clear is that in about the year 1988 the Plaintiff started building his "boathouse" and was immediately stopped by some government department. If the problem was planning permission, the Plaintiff does not appear to have taken any steps to discover what he had to do to get planning permission to continue with his occupation of the land or to complete the construction of his "boathouse." He was stopped from doing the building on the land, and never attempted to continue his project or to continue in possession of

the land, other than the inevitable evidence always in these cases given by rote of picking of the fruit from the trees on the land in question.

[10] It is also quite clear, though the Defendant denied it, that, in or about the year 1988 or 1989, the Defendant had gone onto only an adjoining corner of the same piece of Crown Land, parcel No 1 on the plans in evidence. He commenced squatting on and doing business from a corner of parcel No 1 that the Plaintiff was not occupying. The Defendant began to operate a business, a bar, from his corner of parcel No 1. The business was and is known as Stephens' Hideaway. From the Defendant's evidence, I understand the business has grown from the original bar to now include accommodation facilities. His original little shed, which was all that existed of his project at that time, appears on the 1989 Ministry of Agriculture plan of parcel No 1 put in evidence. Problems arose when the Defendant, who claims to have been a big supporter of the government of the day, was given the wink to increase his occupation to the entire parcel of land sometime around 1994 or 1995. At that point, he commenced to construct a bar and a house on the portion or parcel No 1 previously used by the Plaintiff. At the time that he gave evidence, the Defendant claimed to have increased the structures on the land from the original 1995 house, bar and one cottage, by another 3 cottages or bungalows. These additional 3 bungalows are not shown on any of the plans, having apparently been constructed after the last of the plans in 1995.

[11] By 1995, with this increased construction under way, the Defendant had begun to encroach onto the land surrounding the "boathouse" constructed years before by the Plaintiff. The Plaintiff was at the time an employee on the neighbouring land of the Dennies. He claims he was a "manager." The Defendant emphasises he was only the "watchman." Whatever the Plaintiff's position with the Dennies, the Plaintiff would, from the proximity of his work, have seen the Defendant encroaching onto his "boathouse" and the land he claimed to have been given by his father around the foundations of the "boathouse." Indeed, the Defendant's

evidence is that he used the foundations of the Plaintiff's "boathouse" as a pigsty. The Plaintiff was incensed, and began these legal proceedings.

[12] Meanwhile, the Defendant was not having an easy time of his occupation of the lands in question with government either. For all of his claims of being a big government-party supporter, the government appears to have at first taken steps to stop him from building. He attempted to suggest in his evidence that the government obstacles put in his way were caused by his having stopped supporting the government-party. There is put in evidence a summons against him dating from as late as 1992. He was by this summons charged in the Magistrate's Court with the summary offence of persistently trespassing on the lands in question without a probable claim of title and of erecting a building on it. There is a note in hand writing visible on the copy of the form of summons put in evidence to the effect that the complaint was dismissed for want of prosecution before the Magistrate on 31 March 1994. Subsequently, the Defendant appears to have strengthened his hand *vis-à-vis* the Plaintiff in acquiring the friendship of the relevant government departments. He has been continuously building on the land since the year 1995, without any further official let or hindrance, other than the obstacle placed in his way by the Plaintiff by this suit, and he is well on his way to owning the land in question. There is no evidence that the Crown is continuing to prosecute the Defendant. They have apparently become resigned to the inevitability of the Defendant continuing under some sort of protection to squat on the land and to increase his "tourist" establishment on it. So, they have, according to the Defendant's testimony, agreed to sell him the land in question. The Defendant does not claim any squatter's rights against the Crown, he acknowledges the title of the Crown.

[13] It was the building extension on parcel No 1 that commenced around the year 1995 by the Defendant that was the cause of this litigation. The Plaintiff sought to freeze the conflicting rights and claims of the two parties by obtaining an injunction against the Defendant. On 24 November 1995, after an *inter partes* hearing, an

injunction was granted out of the High Court to the Plaintiff prohibiting the Defendant until the trial of the action "from building or constructing any building on any portion of the land at Cumberland Bay in the State of Saint Vincent and the Grenadines." The Defendant in clear and admitted breach of this injunction continued to build on the land in dispute after the injunction until he has increased his structures on the land to those described above.

[14] At the close of the case, counsel for the Defendant addressed the court and stated that he had no law for the assistance of the court. He left the decision on the facts to the court. Counsel for the Plaintiff had her submissions and authorities prepared. The court is always grateful for written submissions so as to reduce both the amount of dictation that the court has to take and the consequent waste of time, and to allow the court to concentrate on the submissions made by counsel.

[15] In her submissions, counsel for the Plaintiff asks the court to find that the title of the Crown to the lands in dispute has been extinguished in favour of the Plaintiff. The position as I find it is that the parties agree that parcel No 1 on the plan has always belonged to the Crown. The Plaintiff has not joined the Crown as a party to these proceedings. The court will apply in this case the rule *audi alteram partem*, or, hear the other party before giving a decision that would affect the legal rights of that person. The Crown is a necessary party to any question as to who presently owns the property in dispute. The Crown has not been made a party to these proceedings. The Crown has not had an opportunity to refute the allegations of adverse possession made by the Plaintiff. In the circumstances, no declaration can properly be made in favour of the Plaintiff to deprive the Crown of its legal interest in the land in question.

[16] This action is in reality one between two trespassers on Crown land. They both originally trespassed on adjoining parts of parcel No 1 of the Crown land. The Defendant has now taken over possession of the entire parcel of Crown land. He

has, in effect, forcefully evicted his neighbouring trespasser, the Plaintiff, from the portion of parcel No 1 of Crown land occupied by him. The rule is that trespass is a tort against possession, not ownership. Only the Crown had the legal right to take action against the Plaintiff's occupation of the land he claimed, if that occupation was wrongful. The evidence clearly points to the Defendant having offended against the possession of the Plaintiff of part of parcel No 1. The Plaintiff is entitled to judgment on the facts. The question is what remedy is he entitled to? If the Plaintiff is entitled to damages, what would be a proper award?

[17] The Defendant presently has the support of the Crown, from whom I accept he is about to take title. There is no point in attempting to put the Plaintiff back into possession of the land on which the Defendant has now, apparently with the quiet compliance of the various government departments, built up his project even after the granting of an injunction prohibiting him from doing so. The result of such an order would only be to increase litigation between the parties and the Crown. Section 20 of the Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Cap 18 of the 1991 Revised Edition of the Laws of St Vincent and the Grenadines enjoins the court in every cause or matter pending before the court to grant all such remedies as any of the parties appear to be entitled to so that, as far as possible, all matters in controversy between the parties may be completely and finally determined, and all multiplicity of legal proceedings avoided. The only proper decision is to make an award that brings the litigation to an end, and does two further things. First, it must affirm the principle that no one, no matter how well connected, is entitled to use force to eject his neighbour from the land his neighbour occupies, particularly if the ejector does not have any legal title to the land in question. The second is that once a Court of justice makes an order, that order must be religiously obeyed until it is altered or set aside. The evidence of the Defendant was that he did his additional construction after the 1995 plan was prepared, and extending into the 15,000 sq ft area claimed by the Plaintiff to have been occupied by him. The Defendant proclaimed in his testimony his imagined right to continue construction on the property despite the injunction

prohibiting him from doing so. These are not contempt proceedings. But, the court must take into account the evidence adduced before it at the trial. No law has been presented to the court on the amount of an award that should be fair to be made to the Plaintiff for the trespass to the Plaintiff's possession committed by the Defendant both before and after the grant of the injunction. An approximate third of an acre on the beach must have some significant value, but what exactly is not known.

[18] I take into account that this was a contumacious trespass committed after the grant of an injunction. I take into account that the trespass on the land occupied by the Plaintiff was committed by the Defendant to develop his tourist resort business and to make money from the trespass. Perhaps he thought that the amount of money he could make from extending his holdings would more than make up for any damages that any court would award against him. He sought to take advantage of his political connections to override any rights that his neighbour might have in the lands his neighbour occupied and that he, the Defendant, coveted. He was a squatter to the same extent, if not more so, as the Plaintiff. The Crown did not prosecute the Plaintiff, it attempted to prosecute the Defendant. The Defendant was proud to demonstrate how he had worn down the Crown, until the Crown is now forced to treat with him and to let him have the Crown's prime beach site for his project. I do not have any evidence as to the value of lands in that part of St Vincent for touristic purposes. However, an award of EC$25,000.00, though it would be no more than a token sum in some other islands of the Eastern Caribbean, would, given the purchasing power of money in St Vincent, be a fair award to the Plaintiff for the trespass of the Defendant in this case.

[19] There will be judgment accordingly for the Plaintiff and for his costs to be taxed if not agreed

I D MITCHELL, QC
High Court Judge