

ST VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO. 198 OF 1998

BETWEEN:

AMOS STEWART

Plaintiff

and

LESLIE NOEL
BERNICE NOEL
McARTHUR ROBERTSON

Defendants

Appearances:

John Bayliss Frederick for the Plaintiff
Olin Dennie for the Defendants

2000: November 8, 15, 28

JUDGMENT

- [1] MITCHELL, J: This was a land dispute involving a right of way in Union Island in the State of St Vincent and the Grenadines.
- [2] The case began with a Specially Endorsed Writ issued at the request of the Plaintiff on 30 April 1998. The Plaintiff claimed that his land is bound on the south by the land of John Cudjoe; that he had occupied his land undisturbed from the year 1977 until October 1993 when the 1st and 2nd Defendants had trespassed on his land and damaged his fence; that he had employed the 3rd Defendant to survey his land which survey had been negligently carried out; and the Plaintiff claimed a declaration that there was no road or right of way across his land, an injunction against the 1st and 2nd Defendants, damages, and cancellation of the survey plan. The Defence and Counterclaim was filed on 4 June 1999. The

defence was that the Plaintiff's land is bound on the south by a 10 foot right of way and not by the lands of John Cudjoe; that the 1st and 2nd Defendants had always enjoyed access to their property by the 10 foot road until the year 1993 when the Plaintiff attempted to prevent them from using it; that the Plaintiff had wrongfully damaged the windscreen of their pickup when it was lawfully on the road; that the 3rd Defendant was not negligent as the purpose of the survey was to determine the Plaintiff's boundaries and to demarcate the right of way. The 1st and 2nd Defendants counterclaimed for a declaration that there is a road or right of way to their property; an injunction to restrain the Plaintiff, special damages of \$1,000.00, general damages, and such further or other relief as the court deemed just.

- [3] The Plaintiff gave evidence on his own behalf. The 3 Defendants gave evidence on their own behalf. A number of documents were put in evidence: these included the survey of which the Plaintiff complains and which was approved and lodged on 7 January 1994, the Plaintiff's deed No. 269 of 1978, Dalton Wilson's deed No. 1753 of 1977, and the 1st and 2nd Defendants' deed No. 2988 of 1992. These deeds and some others were all put in evidence by consent. The facts as I find them are as follows.
- [4] The lands of the parties were originally part of Stewart estate land. It has now been broken up and distributed and sold to various parties. The Plaintiff holds his land by Deed No. 269 of 1978. His land was not surveyed at the time of his deed. The land was originally given to his father as his father's share of the estate at some point prior to 1952. In about the year 1952 the Plaintiff was given the land. He eventually got his deed from Isaac Hutchinson, his uncle and the Administrator. His boundaries are described on his deed as "105 feet long by 105 feet wide . . . bounded . . . south by lands of John Cudjoe . . . and west by Mings Hutchinson and Dalton Wilson . . ." It is his boundary to the south and his boundary to the west that are in dispute. To his west is said to be Dalton Wilson. From the above it would appear that Dalton Wilson had acquired his land prior to the date that the Plaintiff acquired his land. Dalton Wilson's deed, however, describes his land as

being ". . . one hundred feet long by 50 feet wide . . . bounded . . . east by lands of Amos Stewart, John Cudjoe and a 10 foot road" Dalton Wilson's deed recognises that the Plaintiff owned the land to the east prior to the date of the deed of Dalton Wilson. Although Dalton Wilson's deed claims to be executed on 7 September 1977 and the Plaintiff's deed on 20 December of the same year it is evident that the earlier deed refers to the Plaintiff as already occupying his eastern boundary. Both Dalton Wilson and the Plaintiff got their lands originally from Isaac Hutchinson, being a share of the Stewart Estate. From the evidence of the Plaintiff, it would be fair to assume that both Dalton Wilson and the Plaintiff went into possession of their lands many years before the dates of their deeds. That would explain the apparent contradiction in the earlier deed mentioning the holder by the later deed as being already the eastern boundary of the later deed. The significant point in Dalton Wilson's deed is that it appears from as early as the year 1977 to describe a 10 foot road running from his land towards the east, i.e., where the present 10 foot disputed right of way lies.

- [5] Leslie and Bernice Noel hold their land by deed No. 2988 of 1992. The schedule to their deed describes a 10 foot road as lying on their north. This would be the road in dispute. The vendor in Leslie and Bernice Noel's deed, Ethniel Mitchell, recites her title deed as No. 2322 of 1985. That deed was put in evidence. It refers to the 10 foot access road which is in dispute. That deed was a "Deed of Correction". It recites an earlier deed, No. 88 of 1984. That deed No. 88 of 1984 was also in evidence. Although there are some differences in the description of the boundaries, it is evident that the 1984 and 1985 deeds refer to the same parcel of land. In both, John Cudjoe lies to the east and the vendor Hartford Thomas lies to the west. The principal difference in the two deeds is the description of the southern boundary, which does not concern this case. The 1984 deed describes the north boundary as "Bethamus Hutchinson" while the 1985 deed has this corrected to "a 10 foot road". We have no indication as to who Bethanus Hutchinson was or is. The 10 foot road alleged in the 1985 deed to run to the north is clearly the road in dispute.

- [6] The cause of this dispute appears to be that the Plaintiff's deed omitted to mention that his southern boundary was the road, and, instead inaccurately described John Cudjoe as lying on his southern boundary. The measurement of 105 feet in the Plaintiff's deed does not help to determine the Plaintiff's southern boundary. The survey done in 1994 indicates that, measuring from east to west, his northern boundary is 104.9 feet and his southern boundary is 104.5 feet. However, even if the 10 foot right of way were to be included in the Plaintiff's land, measuring from north to south, his western boundary could only stretch for 81.2 feet and his eastern boundary for 102.8 feet. That is, if one followed the dimensions in the deed, the Plaintiff's western boundary would fall well within the lands undisputedly owned by Leslie and Bernice Noel, and his eastern boundary would fall some feet into the lands undisputedly owned by John Cudjoe. I accept the evidence of the 3rd Defendant that during the survey the Plaintiff told him that he made no claim against the lands of Leslie and Bernice Noel nor of John Cudjoe. The dimensions of the land in the Plaintiff's deed were carelessly or inaccurately measured, and the resulting error in the description of his southern boundary (in including the land over which the 10 foot road that had been allocated to give access to the lands now occupied by Dalton Wilson and the Noels) caused him to become persuaded that the estate land over which the 10 foot road passed was part of his land. This error may well have been caused also by the fact that the Plaintiff is only an occasional resident of Union Island and has lived and worked away, first in England and then in the United States since the early 1950s.
- [7] I do not accept the evidence of the Plaintiff that a road has never run in the location in question. I do not accept that he has lived on that land for over 45 years and that no one used that road as of right. I do not accept that Dalton Wilson used the Plaintiff's land for passage only with the Plaintiff's permission. I believe that the original owners of the Estate land intended to subdivide that part of the Estate, and did subdivide it, with a road running in the location in question. That road I accept was intended to service the properties now owned by Dalton

Wilson and Leslie and Bernice Noel. I accept that the 1st and 2nd Defendants together with those occupying the land of Dalton Wilson have the right to use the 10 foot road depicted on the survey plan prepared by the 3rd Defendant and approved and lodged in the Lands and Surveys Department on 7 January 1994. The right of way lies over land belonging to the original Estate. The Plaintiff's land does not extend to include the right of way but ends at the survey line demarcated on the survey plan from point A2 to point A3.

- [8] The Plaintiff's principal complaint against his surveyor, the 3rd Defendant, arises from the surveyor having surveyed the road and placed it on the Plaintiff's survey. The Plaintiff quite rightly in my view complains that he never employed the surveyor to survey the road. The surveyor would have completed his task completely satisfactorily, I find, if he had shown the Plaintiff's southern boundary where it was. He needed only to indicate on the survey that a road ran to the south of the Plaintiff's boundary. He had no need to survey the road and add it and its dimensions to the survey plan of the Plaintiff. He did not find it necessary to survey all the other 3 or 4 parcels of land on the other boundaries of the Plaintiff. There is, however, no suggestion that he charged the Plaintiff for the additional task. He was paid in full the price he charged when he was retained to survey the Plaintiff's land, and no more. The 3rd Defendant appears to have been attempting by his survey of the disputed 10 ft road on the southern boundary of the Plaintiff to clear up the controversy surrounding the road. He had no obligation to engage in that task. That is a matter perhaps for the Chief Surveyor to deal with under the **Land Surveyors Act, Cap 266** of the 1991 Revised Edition of the Laws, when he carries out his statutory duty to check plans and to order that plans be corrected or further surveys conducted in the event that the Plaintiff or anyone else had complained that the survey was inaccurate. The 3rd Defendant testified that he had surveyed the road and placed it in the Plaintiff's survey plan because the Plaintiff had agreed to the location of the road and to permit the 3rd Defendant to place the road on the survey plan. He had no evidence other than his say-so of the Plaintiff's alleged consent, and the Plaintiff denied it. The 3rd Defendant

brought no copies of his records, including any consent given by the Plaintiff as alleged, and I have to say, given the fact that the Plaintiff is still complaining about the road, that I do not find that the Plaintiff ever accepted the road. No papers submitted by the surveyor to the Chief Surveyor were produced in evidence at the trial, though it would have been a simple matter, if it would have helped the 3rd Defendant, to have obtained certified copies from the Chief Surveyor's office. The 3rd Defendant is not entirely to blame for this. Though the Act has been passed since 1973, no regulations under the Act have been prescribed by the Governor-General as to the manner in which surveys are to be made, the records to be kept by surveyors, the forms of notices to be issued under the Act, or as to the returns and reports to be made by surveyors to the Chief Surveyor. Given the plethora of regulations to be found under similar Acts throughout our Caribbean region, there is no excuse for the relevant Ministry delaying any longer in drafting the appropriate regulations and forms and submitting them for Cabinet approval and signature by the Governor-General. Such regulations would make it plain to all citizens and surveyors what the duties of a surveyor are, *inter alia*, in dealing with a dispute when he goes onto the land in question. The absence of any such regulations makes it impossible for me to find that the surveyor is liable in negligence to the Plaintiff for the way in which he conducted this survey.

- [9] Given the above findings, the Plaintiff's Statement of Claim against the Defendants is dismissed. The 1st and 2nd Defendants are entitled to the declaration and the injunction that they claim in their Counterclaim. No evidence was given of special damage, but they are entitled to general damages for the interference by the Plaintiff with their right of way. I award the nominal sum of \$1,000.00 general damages. In exercise of the discretion given to me, I award costs to the 1st and 2nd Defendants, to be taxed if not agreed. The 3rd Defendant will bear his own costs.

I D MITCHELL, QC
High Court Judge