

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. D 058 OF 1985

BETWEEN	TREVOR DAVIS	PLAINTIFF
A N D	JAMAICA PUBLIC SERVICE COMPANY	FIRST DEFENDANT
A N D	C.G. RICHARDS & ASSOCIATES LTD	SECOND DEFENDANT

W.B. Frankson Q.C., M. Frankson. B.E. Frankson and B. Marshall for the plaintiff instructed by Gaynair & Fraser.

C.M.M. Daley and Miss C. Vassell for first named defendant instructed by Daley Walker and Leehing

Hearing on July 10, 1989, March 19, 1990, March 11, 14, 1991, March 2, 5, 16 and November 26, 1992.

Judgment

Bingham J

Opening Remarks

This claim by the plaintiff against both defendants resulted from a fire which occurred at Retirement in Westmoreland on 12th December 1984 which as a consequence totally destroyed the plaintiff's dwelling house. A specially endorsed Writ accompanied by a Statement of Claim followed shortly after the incident on 5th April 1985 and with the filing of a defence on 18th September 1985 the pleadings were closely on 9th December 1985 following the hearing of the Summons for Directions. The hearing of the action which commenced on 10th July 1989, and which in fact dragged on to what seemed at times an interminable end for reasons which are not relevant to a determination of the issues which arose out of the pleadings. That the hearing was not concluded until 16th March when judgment was reserved is indeed regrettable. The fact that this written judgment is just now being completed is the inevitable result of the protracted delay in completing the hearing of the matter. In an attempt to do justice to the parties the trial process needs to be as continuous as is humanly possible. If not and, as in this case, where it is long and drawn out then there is every likelihood that memories of events related and the demeanour of witnesses may become somewhat blurred with the passage of time and ones own recollection be overcome by the determination of other intervening causes.

The Pleadings and The Issues

This matter, however, in so far as the facts are concerned is in the main not disputed. That there was a fire on the date and at the place in question is not in

issue. The crucial question falling for determination is how was this fire caused? The plaintiff is contending that it was caused by the defendants. The onus of proof lies on him to establish on a balance of probabilities that which he asserts.

The Statement of the Claim in so far as is material alleges that:-

- "4. In about December 1984, the first defendant was engaged upon the work of up-grading pole lines and transformers on its installations to increase the power supply from 10,000 KVA to 24,000 KVA in the Western Savanna-la-Mar - Negril area in the parish of Westmoreland.
5. The plaintiff's dwelling house was located in the aforesaid area, and the plaintiff was a consumer of electricity in that dwelling which was supplied through the defendants said lines and transformers.
6. On the 12th day of December 1984, whilst the defendants were engaged in the aforesaid work a surge of power was transmitted along the line or lines carrying power to and into the plaintiff's dwelling house at Retirement aforesaid as a consequence whereof the said dwelling house was set ablaze and was destroyed."
(Emphasis supplied).

In their defence put in by the first defendant at paragraph 9 they added this rejoinder:-

"This defendant denies that there was any escape of electricity from its transmission lines or installations which cause damage to the plaintiff's dwelling house as alleged.

.....
.....and
denies that this defendant is in any way liable for damage to the plaintiff's dwelling house."

Mr. Daley frankly conceded in his closing submissions that if the Court found that there was a fire on the power lines which escaped destroying the plaintiff's house then that would be an end to the matter. Judgment would have to be entered for the plaintiff. A failure to do so would inevitably result in a judgment for the defendant. Given the rule in Rylands v. Fletcher [1868] LR 3 HL33 this was a valid concession on his part.

The Evidence

The plaintiff gave evidence and called two witnesses Samuel Campbell and Dianne aa Ennever the latter a Real Estate Dealer whose evidence going as to damages was material only in so far as there was a finding on the issue of liability in the plaintiff's favour. The plaintiff for his own part was not at home when the fire commenced and was unable to assist the Court in giving any evidence as to the circumstances which

resulted in the fire. His evidence related to recalling the construction of the dwelling house, and its subsequent wiring for the receipt of electrical current. The house having been inspected by the Electrical Inspector the plaintiff subsequently applied for and obtained service from the first defendant company. This came shortly after he had signed a document and paid his deposit at the defendants office in Savanna-la-Mar. The plaintiff recalled that about two weeks before the fire on 12th December 1984, the residents in the area had been experiencing low voltage. In the nights when they switched on their lights the bulbs in the house appeared dim and produced a red glow. He also saw the first defendants workers engaged in working on the power lines. He told of going to the office in Savanna-la-Mar and complaining about this problem of low voltage. He was then told that "they were working on the lines boosting up the current in the Negril area so we will soon get everything all right."

On the morning of 12th December 1984, he had left his home with his girlfriend for her parents home around 7:30a.m. After having breakfast there and while speaking to two friends by the roadside the plaintiff recalled hearing the power lines started to sing and make some clapping sounds like pow! pow! pow! Someone then shouted to him and he then ran in the direction of his house which he observed to be then on fire. The roof had by then almost burnt off and had collapsed onto the remainder of the house. The house which had cost him \$16,000.00 to construct was burnt down flat. All the contents of the house were destroyed in the fire. He subsequently made a report to the Police and later to the District Manager at the office of the first defendant in Savanna-la-Mar. He told of seeing Mr. Basil Boothe, who was then the supervisor of operations employed to the first defendant company, at the site on the following Monday.

Following the fire and on checking the meter the plaintiff said that he noticed that it was burnt. There was no evidence of the service lines leading to the plaintiff's house being scorched or burnt. No one saw any fire, if caused by an electrical short circuit running along the power lines and onto the plaintiff's service line or on its way to destroying the plaintiff's house.

The other witness as to fact Samuel Campbell supports the plaintiff's account in experiencing low voltage for two weeks prior to the day of the fire. On that day, 12th December 1984, he recalled working on the roof of his premises around 11a.m.

he heard the same popping sounds described by the plaintiff and this caused him to come off the roof. About six minutes later he heard persons calling out that the plaintiff's house was on fire. He then ran in that direction and saw the house ablaze. He also admits that apart from the plaintiff no one else in that neighbourhood experienced any damage to their premises.

Like the plaintiff, he had seen men working on the power lines from around 9a.m. on the day in question. It was after the men had left that he heard the popping sounds. This was around 10a.m. - 11:30a.m. By way of a departure from the case opened to by learned Counsel for the plaintiff, however, the witness made no mention of seeing any fire on the power lines. He deposed to the fact that:-

"I ran down to Mr. Davis' house and I saw it was on fire. I never saw the fire travelling any where."

It was therefore left to the plaintiff to fill in the gaps in the evidence as to "how the fire escaped and destroyed his house." Given the fact that Counsel's opening did not advert to the plaintiff observing fire running on the power lines, when he testified the following account now emerged:-

"When the noise and fire started on the line the people gathered watching the excitement.
Fire was running on the line. I showed Mr. Boothe the transformer and the line. Just looking at the wire I never seen anything happen to the wire.
I was not penetrating that much to see if anything happen to the wire.
 (Emphasis supplied)

Earlier the plaintiff had testified to his making a report to Mr. Boothe at the site on the Monday morning following the fire, but to use his own words for some strange reason "he never checked to see whether any of the power lines were burnt." This issue of fact resolves itself to one affecting the credibility of the plaintiff. Given the fact that his evidence was as to seeing a fire on the power line, and this not being a part of Counsel's opening remarks in outlining the plaintiff's case, there was the added factor, still unexplained in his case that he testified to seeing fire on the line, which had this been so, one would ordinarily expect that in the natural course of events the power lines would have been burnt or scorched. One would also expect that this would have been one of the first things he would have brought to Boothe's attention on the Monday when he visited the scene.

The evidence of the removal of the meter shortly after the fire has been advanced by the plaintiff as suggesting that this was done to cover over some evidence which may have assisted in establishing a causative link as to what resulted in the fire.

Although the plaintiff testified to seeing the meter in a burnt condition before it was taken away, he never observed anything wrong with the power line. To advert once more to his evidence:-

"He was not penetrating that much to say what happened to the wire."

Having regard to the circumstances in which this evidence both as to the condition of the meter and of seeing fire on the line, I would regard the plaintiff's testimony as being most doubtful as to its veracity. This is all the more buttressed when one examines the account of Samuel Campbell. This witness I found to be a frank and truthful person. He was portrayed in Counsel's opening remarks as the witness whose evidence would have been crucial to the plaintiff's case as to establishing the allegations at paragraph 6 of the Statement of Claim of "fire escaping and destroying the plaintiffs house." Apart from hearing "the popping sounds coming from the electricity wire" and experiencing low voltage in his own power supply, a fact which caused him to plug out all his electrical appliances a few days before the fire, as it emerged from his account, he never observed:-

- 1 Any fire on the power line.
- 2 Any meter at the plaintiff's home blackened and smoking.

both of these being factors which were alluded to by leading Counsel for the plaintiff in his opening remarks. This witness was even more explicit as to the latter statement.

He testified that:-

"I have a meter for my premises nothing happened to it that day. Mr. Davis (plaintiff) had a meter for his house but I never looked on it. Mr. Davis had a wire running from his house to the pole. I never looked at the wire."
(Emphasis supplied).

The accounts related by the witnesses for the first defendant company Basil Boothe and Christopher Grizzle was no less frank and forthright. It is of some significance that Mr. Boothe who had over 30 years working experience with the first defendant company, is no longer associated with the Jamaica Public Service Company. In that regard he has no interest to serve. Mr. Grizzle with almost 30 years working experience and a licensed electrician for 16 years of that period was the person who as a construction supervisor was directly in charge of the upgrading works taking place in the Negril area in 1984 at the time of the incident at the plaintiff's

home. Their accounts when examined are of no assistance to the plaintiff's case having regard to the fact that as their accounts indicate:-

1. The upgrading works in the Orange Bay - Negril area involved a different circuit and this enabled the defendants to de-energise and so isolate the power lines in the area serviced by the first defendant company.
2. The problem involving the high voltage lines where the work were being carried out which affected Mr. Rhoden's pump house in the Negril area had resulted in that area being temporarily put out of power while the repairs were being effected.
3. The de-energising of these line would have in no way interfered with the domestic power supply to the Sheffield area which involved the plaintiff's house, that area being serviced by a different transformer.

In summary when the totality of the evidence is considered the following matters come to mind:-

- a. The plaintiff is contending that a power surge resulted in a fire along the power line resulting in a fire along the service line which destroyed his house.
- b. His account is doubtful as to its veracity given Samuel Campbell's evidence and manner in which plaintiffs case was presented in opening by Counsel.
- c. The unchallenged evidence of the defendants employees in particular Mr. Christopher Grizzle a worker with 30 years experience to the effect that a power surge would affect all customers served by the same transformer. Only the plaintiff house was burnt down or affected in anyway.
- d. The further evidence of Mr. Basil Boothe the supervisor employed to the first defendant company and in charge of the Sheffield area at the time of the fire. He deposed that the transformer in place supplied some sixteen houses including the plaintiff's residence.
- e. Mr. Christopher Grizzle from his own experience of almost 30 years of working with the first defendant company has never come across a single case of a power surge being high enough as to result in fire to power lines. If the surge was too high then the transformer fuse would blow thus isolating the circuit.

In conclusion the expert evidence adduced by the company's witnesses ruled out there being any likelihood of the fire to the plaintiffs house resulting from any fault in their power supply system. The fact that the fire was confined to the plaintiff's house and that there was no evidence of scorching or burning seen on either the power line or the service line leading to the premises would strongly support the defences contention that the fire was not the result of any electrical fault in

the defendants power supply system.,

Although leading Counsel for the plaintiff in his opening adverted to the witness called for the plaintiff Samuel Campbell, and to the evidence to be adduced from him of:-

"hearing a sound coming from the transformer and seeing fire on the line and running to his house and turning off the current coming into his house."

When this witness gave evidence he deponed only to hearing popping sounds which caused him to come off his roof. He did not mention in his evidence of seeing any fire or any power line on fire. The plaintiff for his part, while not being able to say how the fire started was bold enough to assert that "it was the J.P.S. who was the cause of the fire." Low voltage over a two-week period before had caused Mr. Campbell to plug out his electrical appliances. The popping sound on the day of the fire had started after he had seen a man climb the pole and work on the power lines. What is most material, however, is that apart from the plaintiff's house no other premises was affected by fire. Given the allegations as set out in paragraph 6 of the Statement of Claim there was no evidence adduced by the plaintiff to establish either directly or inferentially that the fire which destroyed the plaintiff's house was due to some fault in the power supply system operated by the first defendant.

The result is that, however, much one regrets this grave misfortune that has befallen the plaintiff and terrible as it has been for him, no blame can on the evidence presented be attributed to the defendant and judgment is accordingly entered for the first defendant company with costs to be taxed or agreed.