

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1988/R016

BETWEEN	GEORGE REID	PLAINTIFF
AND	THE WEST INDIES SUGAR COMPANY LIMITED	DEFENDANT

Leon Green and Lowell Smith for the Plaintiff

Lawrence Haynes for the Defendant

HEARD: SEPTEMBER 24, 25, 26, OCTOBER 13, NOVEMBER 19, DECEMBER 18, 1990.

CORAM: WOLFE J.

The Plaintiff George Reid is a shopkeeper residing and carrying on business at Ricketts River in the parish of Westmoreland.

The Defendant Company is engaged in the production of sugar at Frome in the said parish of Westmoreland.

The Plaintiff's house and shop are sited along the main road leading from Savanna-la-Mar to Grange Hill and on the right hand side of the road as one proceeds east from Savanna-la-Mar. The Defendant owns lands on the left side of the main road as one proceeds east from Savanna-la-Mar.

The Ricketts River flows from the north east, crossing the Savanna-la-Mar to Grange Hill main road and continues in a southerly direction through the Defendant's property.

The Defendant's property along the main road and at the southern boundary is fenced by a chain link fence. A visit to the locus in quo showed that to, the southern end of the Defendant's property the chain link fence runs across the river and a wooden flood gate is erected in that area. By way of explanation, a flood gate is a device used to control the flow of water. There are also signs that the chain link fence at one time ran across the river in the area where the bridge spans the main road.

A private road leads from the main road into lands owned by the Defendant Company. Along this road a bridge spans the river.

I have taken time out to give a description of the locus in quo at the very outset of this judgment because the geography of the area forms a very important plank in the Plaintiff's case.

The 5th day of June, 1986 was a day of unusually heavy rainfall in the parish of Westmoreland generally and in the areas of George's Plain and Ricketts River in particular. The Ricketts River overflowed its banks and the water therefrom flooded the Plaintiff's land and business premises. The Plaintiff contends that the river overflowed its banks as a result of

1. The chain link fence which was erected by the Defendant across the river.
2. The flood gates which were erected by the Defendants, in the river course.
3. The bridge built, by the Defendant, across the river in the Fontabelle area of the Defendant's property.

The Plaintiff gave evidence that he purchased the lands in 1973. In the same year that he purchased his lands the Defendant erected a chain link fence around the boundaries of its land.

Six (6) years after the Defendant enclosed its property with the chain link fence and for the first time in April 1979 the Ricketts River overflowed its banks and the water therefrom flooded the Plaintiff's premises. The Plaintiff contends that the flooding was due to debris which collected in the chain link fence thus impeding the free flow of the water in the river course.

In June 1979 the Plaintiff's land was again flooded by water from the Ricketts River which overflowed its bank. On this occasion the chain link fence was washed away and the Plaintiff observed that the water subsided when the fence was washed away.

For the third time on the 5th of June 1986 during island wide flood rains the Ricketts River again overflowed its banks and flooded the Plaintiff's land. The Plaintiff's business place was flooded out. He lost goods valued at \$20744.93. The Plaintiff became ill with pneumonia as a result of having to work in the water to salvage his goods. He incurred medical expenses of \$1650.00 and he estimated that he lost profits amounting to \$11,850.00. By way of comment

there is no evidence that any other premises in the area was flooded.

The Defendant contended that the area was prone to flooding and that in June 1986 the flooding was due to the excessively heavy rainfall in the area. Evidence was adduced to show that on the 3rd day of June 1986 in the Frome area of Westmoreland 120 mm. of rain fell. Then on the 4th day of June 140.0 mm. of rain fell, followed by 14.0 mm. of rain. Significantly on the 4th of June 3314.1 mm. or 130.5" of rain fell in the entire area of Westmoreland. And the average rain fall for the month of June was 20.3". So as to illustrate the importance of these figures I set out the average rainfall for the months January - May 1986.

January	5.71"
February	2.61"
March	7.68"
April	1.60"
May	11.92"

Before analysing the figures I must state that these figures were supplied by Mr. Rae Williams, Chief Clerk in the Agricultural Department of the Defendant Company. He has the responsibility of keeping the rainfall records. His evidence, which was unchallenged, is that the meteorological office relied upon his figures for statistical purpose. I accept that the figures produced by this witness is a true representation of the rainfall for the area.

If the Plaintiff's contention, that the flooding was due to the erection of the chain link fence, the bridge and the flood gate, is sound how does one account for the fact that on the 3rd day of June when the rainfall is 120 mm. there is no flooding and similarly on the 4th day of June when the rainfall is 140mm. However on the 5th day of June when the rainfall is only 14.0 mm flooding occurs. This evidence in my view points to the fact that the flooding was due not to anything which the Defendant had done but to the rain continuing to fall heavily over a period of 3 days.

Mr. Williams opined that any rainfall in Excess of 1" per day is above normal.

There is evidence from Mr. Williams that the Gaberetta River in Westmoreland also overflowed its bank.

My visit to the locus in quo was revealing. The Ricketts River runs to the left of the Plaintiff's premises as one stands on the main road and faces the Plaintiff's premises. The river passes a matter of few yards from the premises and the banks in that area are lower. On the other hand the area from which the Plaintiff is alleging the flooding takes place is approximately twenty chains from the Plaintiff's premises and the water would have to flow up land which slants towards the river, and then flow across the road into the Plaintiff's premises.

The quantity of rain which fell over the period and the geography of the area considered, I am not satisfied on a balance of probabilities that the flooding was due to any act done by the Defendant.

In addition to seeking an award of damages for negligence and nuisance the Plaintiff sought a declaration "that the Defendant was not entitled to maintain across the Ricketts River in the vicinity of George's Plain and Ricketts River in the parish of Westmoreland a chain link fence and bridge so as to cause any or such an obstruction to the free flow of the said river as will or is likely to be a nuisance to the Plaintiff."

On viewing the chain link fence erected by the Defendant I am satisfied that it does not restrict the flow of water in the river course. Neither does the bridge, which is erected in the Fontabelle area, have that effect.

Accordingly there will be Judgment for the Defendant with costs to be taxed if not agreed.