Present : Porter and Schneider JJ.

1922.

SIADORIS *v.* SILVA.

250—D. C. Galle, 17,584.

Silt carried along drains in defendant's land into a water channel in plaintiff's field—Blocking of channel—Overflowing of silt rendering field useless—Action for damages—Was it plaintiff's duty to keep channel clear?

A large quantity of silt was carried along the drains in the defendant's land which he had cleared and planted with rubber into a water channel in the plaintiff's field; the channel was blocked and eventually breached, and the silt overflowed into the field and rendered it unfit for cultivation as a field. Plaintiff sued defendant for damages. The District Judge held that the plaintiff should have kept the channel clear as it was in his field, and that as he had failed to do so, he was not entitled to damages.

Held, that defendant was liable in damages.

THE plaintiff brought this action alleging that as a result of the defendant's clearing his lands and opening ditches on them about one-half part of the plaintiff's paddy field had been completely covered with silt and rendered altogether useless ; the plaintiff claimed Rs. 900 as damages sustained by him at the date of the action, and also claimed to have the field cleared of the silt by the defendant, and to have it restored to its original state.

The defendant-respondent filed answer stating that only ten kurunies extent of the field had got silted, and that silting has been gradual and the result of natural cause. He also alleged that the silting was due to the negligence of the plaintiff-appellant in not clearing out the pitawana. The defendant denies liability, and prayed that plaintiff's action be dismissed.

The learned District Judge (W. L. Murphy, Esq.) delivered the following judgment:—

The defendant in this case is sued for damages for a silted paddy field. The defence has further evidence to call, but I am not satisfied that the plaintiff has a legitimate claim, and accordingly dismiss the case at this stage.

I have inspected the land. The high lands on both sides. north and south, are owned by the defendant. Silt appears to have entered the field from one side only, viz., that on which defendant states he did not dig silt-traps, as there was a pitawana or drainage channel running along plaintiff's land which carried the silt away. This pitawana was pointed out to me at the inspection. All the silt now on the land has clearly come down this pitawana up to a oint where the cannel is blocked, at this point the cannel has breached and the silt has spread over the field. The channel has obviously been neglected for years, and

1922.

Siadoris v. Silva

this neglect caused the channel to be blocked and eventually to breach, thus spreading the present silt over plaintiff's land. The channel was the plaintiff's, and he should have kept it in order.

As regards damages the claim is exorbitant. At Rs. 20 per kuruni which defendant's counsel accept as reasonable, and which from Mr. Gooneskere's evidence I accept as reasonable value of the land—the plaintiff might, if successful, be awarded Rs. 250 for the value of the land and Rs. 100 for loss of crop.

This, I consider, would be a reasonable amount to award if plaintiff succeeded.

On my finding on the second issue, I dismiss the action, with costs.

Elliott, K.C. (with him *Weerasuriya*), for plaintiff, appellant.

H. J. C. Pereira, K.C. (with him *M. W. H. de Silva*), for defendant, respondent.

February 15, 1922. SCHNEIDER J.—

This appeal raises two questions : First, is the defendant liable in damages; and next, if he is, what is the measure of the damages? It is well established by the evidence in the case that a large quantity of silt had been carried along the drains in the defendant's land which he had cleared and planted with rubber into a water channel in the plaintiff's field ; the channel was blocked and eventually breached, and the silt overflowed into the field and rendered it unfit for cultivation as a field. The plaintiff claimed Rs. 900 as damages, and also an order that the defendant should remove the silt. The learned District Judge held that the silting was in consequence of the operations on the defendant's land, but he thought that the plaintiff should have kept the channel clear as it was in his field, and that as he had failed to do so, he was not entitled to any damages. If the plaintiff were entitled to damages he thought he should be awarded Rs. 250, " the value of the land," and Rs. 100, the value of the loss of the crop. He dismissed the plaintiff's action. The appeal is by the plaintiff.

The learned Judge's attention does not appear to have been directed to the case of *Samuel Appu v. Lord Elphinstone* [1] which is entirely in point. Upon the facts proved the defendant is clearly liable in damages as held in that case upon the principle " *Sic utere tuo ut alienum non lædas.*" I would, therefore, hold accordingly.

Clearly the District Judge has assessed the damage upon a wrong principle. The damages should be (1) the loss of crop—that is, not the value of the whole crop, but only of the landlord's share of it ; if the plaintiff has had the field cultivated upon the agreement that he should receive a share of the produce. If the plaintiff had cultivated the field himself, it should be the value of the crop, less the cost of cultivation.

[1] *(1909) 12 N. L. R. 321.*

(2) The cost of the restoration of the field to that state in which it was prior to the tort complained of, or, in other words, the cost of the removal of the silt.

The learned District Judge stopped evidence which the defendant might have called. I am not satisfied with the plaintiff's proof of damages. I would, therefore, set aside the decree appealed from, hold that the plaintiff is entitled to recover damages, and remit the case for the assessment of damages upon the measure indicated by me. Each party will be entitled to lead evidence upon the issue of damages. The plaintiff will have his costs of this appeal. Other costs will abide the order of the District Judge.

PORTER J.—I agree.

Set aside.