

JOSEPH KLUTSEY, Appellant, *v.* **BONG MINING COMPANY**, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Heard: May 8, 1985. Decided: June 20, 1985.

1. In negligence cases, where special damages are claimed, the onus is usually upon the injured party to prove the negligence situation to the court, except in situations where the accused is held under strict or absolute liability.
2. Liability for injury resulting to another accrues in the absence of an account of the standard of care exercised.
3. Negligence can constitute a ground for legal liability even though the fault upon which it is predicated is attributed to imprudence or to a lack of skill rather than to a conscious design to do wrong.
4. All legal principles governing or which ought to govern the charge of negligence should be proved by the injured party.

Appellant Joseph Klutsey brought an action of damages against the appellee, Bong Mining Company, accusing it of contributory negligence in constructing a railway adjacent to appellant's land without also constructing tunnels crosswise to serve as flood outlets. Appellant's house, which had been constructed nine years following the construction of the rail-way, was engulfed by flood when the waters rose as a result of heavy rains. Appellant demanded \$10,000.00 as compensation for the damages to his house.

The jury returned a verdict in favor of appellee, thus denying appellant any right of recovery. Thereafter, trial court entered judgment confirming the verdict. From this judgment, appellant appealed to the Supreme Court for a review of the case.

The Supreme Court affirmed the judgment of the trial court, holding that appellant had failed to prove that the appellee had been negligent in constructing the railway or that the construction of the railway had caused the damage to appellant's house which was constructed subsequent to the construction of the railway. The Court opined that the appellant should have had engineers inspect the area prior to constructing his house thereon. This, it said, might have alerted appellant to the condition of the land and assist him in

deciding not to build his house thereon. The Court observed that it could not place on the appellee the burden of criss-crossing its railway with flood outlets when there was no house on the adjacent land at the time. Finding that there was no error in the jury's verdict of not liable and in the trial court's judgment confirming the said verdict, the Court proceeded to *affirm* the judgment.

Topor appeared for the appellant. *S. Edward Carlor* of the Gordon, Carlor, Hne, and Teewia Law Offices appeared for the appellee.

MR. JUSTICE JANGABA delivered the opinion of the Court.

This is a case involving Joseph Klutsey, the appellant in this case, and the Bong Mining Company, appellee herein. The appellant claims to own a building which is located in the Settlement of Caldwell, near the appellee's railway. It must be noted, here that the appellee was licensed by the Government of Liberia to mine iron ore in the country. In pursuit of that concession, the appellee had built a railway from Monrovia to the Bong Mining geological area, starting the said construction in 1962 and completing the same in 1965.

According to the records, the appellant purchased a parcel of land the same time the railway construction begun. In fact, to be exact, the appellant's deed was dated 1973, some nine years after the railway was built and came into full use. As was expected of a landlord or owner, the appellant built a house on his premises. Unfortunately, however, the tropical rains took their toll; the waters began to rise and soon the house that the appellant had built was engulfed by flood.

Enraged at the destruction of his house by the flood, the appellant found that he could point an accusing finger at the appellee, Bong Mining Company. He averred, among other things, that because appellee had failed to build tunnels cross-wise under its railways which were adjacent to the appellant's property and which could have served as flood outlets, the omission contributed to the flood which caused damage to his house. He therefore accused appellee of negligence.

On November 25, 1975, the appellant, plaintiff below, filed suit, claiming damages in the amount of \$10,000.00 against the defendant company, representing the said amount to be compensation for his house. The plaintiff/appellant's optimism was seriously misplaced by the judgment in the lower court which found the defendant company not liable. From this judgment the appellant announced an appeal, filed a 25 count bill of exceptions and

perfected the appeal to this Court.

After a careful analysis of the facts in this case *pro et con*, the following issues become paramount over all others:

- (1) Whether or not the appellee was negligent in constructing the railway through the contiguous land?
- (2) Whether or not the appellant is entitled to recover damages as prayed for ?

In negligence cases, where special damages are claimed, the onus is usually upon the injured party to make a clean breast of the negligent situation to the court, (*See Brown v. Brown*, 1 LLR 14 (1861); *Shamag v. Turkett*, 16 LLR 257 (1965); *Vianini v. Cole*, 16 LLR 95 (1964)), except in situations where the accused is held liable under strict liability or absolute liability. *See* 38 AM. JUR., *Negligence*, § 4. Under this law, liability for an injury resulting to another accrues in the absence of an account of the standard of care exercised. More-over, negligence can constitute a ground for legal liability even though the fault upon which it is predicated is attributed to imprudence or to lack of skill rather than to a conscious design to do wrong. *See The Montet Allegre*, US 616.

In the facts of this case, the appellant has simply attributed negligence to the appellee without actually proving the charge against the appellee. The only reference to the injury is made when the appellant stated in count one of his 25 count bill of exceptions that it was negligent for the appellee to construct a railway line without constructing a drainage system under said railway lines. This Honourable Court does not find it sagacious to perch such herculean burden upon the shoulders of the appellee to criss-cross his railway with flood outlets. The record shows that it was the appellant who came to the land some nine years after the railway system had come into full operation. One wonders therefore whether or not the appellee foresaw that the construction of its railway system would cause damage to the appellant's house which had not yet been built. The same view could also be expressed concerning the conduct of the appellant in erecting his house in what we are inclined to term 'troubled waters'. By this we mean the appellant owed a duty to himself to seek expert advice through qualified engineers to find out whether the area on which he eventually built his house was suitable for that purpose. This Court is sure that had such engineering advice been sought, or the Zoning Law conformed with, the construction of the house on such a flood trap would have been discouraged. Instead, what we have here is a situation in which the appellant went ahead and built a house at a lower basin of a flat plain, making the house extremely susceptible to flooding during the rainy season. It was only after the occurrence of the incident that appellant pointed an accusing finger at the appellee company. It was only then also that both parties went out to seek engineers from the Public Works Ministry to correct an already hopeless situation. Of course, that help never materialized. Under the circumstances, a charge of negligence cannot be sustained against the appellee, especially so where it was not proven.

On the other issue of whether or not the appellant could recover special damages against the appellee, we must make a brief journey into the past to see what this Court has stated about that. The legal principles governing, or which ought to govern the charge of negligence, should be proven by the injured party. Reliance: *Nimley v. Cole et. al.*, 13 LLR 356 (1959). In the case before us, where the appellant failed to prove the charge of negligence against the appellee in the construction of its railway system, the issue of whether or not damages should be awarded cannot be prematurely passed upon. Consequently, we are of the opinion that the judgment of the court below in favor of the appellee company should be, and the same is hereby affirmed. Costs disallowed . And it is hereby so ordered.

Judgment affirmed.