



OUTER HOUSE, COURT OF SESSION

[2019] CSOH 27

A273/17

OPINION OF LORD ERICHT

In the cause

JACQUELINE GLEN EDWARDS AND ANOTHER

Pursuers

against

FIFE COUNCIL

First Defenders

and

NORMAN MILNE

Second Defender

**Pursuer: Lindsay QC; Ledingham Chalmers LLP
First Defender: Hanretty QC; BLM
Second Defender: Duthie; DAC Beachcroft Scotland LLP**

19 March 2019

[1] The pursuers' house was severely damaged by flooding from the Ceres Burn in Dura Den in Fife. They raised an action for damages jointly and severally against firstly the local authority in respect of breach of duties under sections 56 and 59 of the Flood Risk Management (Scotland) Act 2009 and secondly a neighbouring landowner in nuisance.

They averred that the flood would not have occurred had a weir across the burn not been blocked with accumulated debris.

[2] A neighbouring house was also severely damaged by the same flood. The neighbours also raised an action against the local authority and landowner on the same grounds. Both cases called before me at the same time for debate on the preliminary pleas of both the local authority and the landowner. The issues in the current case and the neighbour's case were identical.

[3] I set out my decision on these issues in detail in the neighbour's case, that is *Sabet v Fife Council and another* [2019] CSOH 26.

[4] For the reasons set out in that decision, I shall sustain the first defender's third and fourth pleas-in-law, repel the pursuers' first and fourth pleas-in-law and dismiss the action against the first defender.

[5] I shall allow a proof before answer in respect of the case in nuisance against the second defender, and shall put the cause out by order for discussion of further procedure in respect of that case.

[6] I reserve all questions of expenses in the meantime.