who does it from being liable in damages if he injures his neighbour's land.

We think the plaintiff was entitled to the relief which the lower Appellate Court gave him and we dismiss this second appeal with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

RAMA ODAYAN AND OTHERS (DEFENDANTS), APPELLANTS,

v.

SUBRAMANIA AIYAR (PLAINTIFF), RESPONDENT.*

1907. December 12, 13, 16. 1908. January 23.

Water, right to—Infringement of water right, whether contractual or proprietary, when likely to cause damage, may be restrained by injunction though no evidence of actual damage is given.

Ryotwari lands belonging to the plaintiff had been irrigated for a period of more than 60 years by a channel without any interference on the part of Government. The defendant without any justifying cause blocked up the mouth of the channel cutting off the entire supply of water. The plaintiff without claiming any damages but stating in a general way that he had been damnified by the act of the defendants sued to restrain the defendants by injunction from interfering with the channel:

Held, that the plaintiff was entitled to the injunction sued for whether his right to the water was based on a contract with Government or whether his right was a proprietary right appurtenant to his ownership of land.

In either view of the case, the plaintiff is entitled to succeed without an express finding as to damage. It is enough if the act is such as to be likely to cause damage to the plaintiff, and the stoppage of the entire supply of water is such an act.

The interference with contractual relations without sufficient justification is a violation of legal right which gives a right of action to the party whose rights are infringed. The observation of Lord Macnaghten in *Quinn* v. *Leathem* ([1901] A. C., 495 at p. 510), referred to.

THE facts are sufficiently stated in the judgment.

T. V. Seshagiri Ayyar and *R. Kuppuswami Ayyar* for appellants.

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* Second Appeal No. 319 of 1905, presented against the decree of F. D. P. Oldfield, Esq., District Judge of Tanjore, in Appeal Suit No. 448 of 1904, presented against the decree of M. R. Ry. S. Ramaswami Ayyar, District Munsif of Mayavaram, in Original Suit No. 355 of 1902.]

RAMA ODAYAN v. SUBRAMANIA AIYAR.

The Hon. The Acting Advocate-General, The Hon. Mr. V. *Krishnaswami Ayyar* and *T. S. Rajagopala Ayyar* for respondent.

JUDGMENT (Sir ARNOLD WHITE, C. J.).—The facts of this case, as admitted or found are stated in the judgment of my learned brother, which I have had the advantage of reading.

It seems to me that whether we regard the relations between the plaintiff and Government, with reference to the supply of water, as contractual, the view taken in *Chinnapa Mudaliar* v. *Sikka Naikan*(1), or whether we regard the plaintiff's right to the water of the channel as a proprietary right appurtenant to the ownership of the land—in either view, I think the injunction which has been granted can be sustained without any express finding that actual damage has been suffered by the plaintiff.

Assume the rights of the plaintiff as against the Government to be contractual. I do not think it is necessary in order to uphold the injunction which has been granted to pray in aid the principle of the decisions in *Temperton* v. *Russell* (2) and *Quinn* v. *Leathem*(3). In fact I doubt whether the principle of these decisions has any application to the present case. This is not a case of inducing a man to break his contract with a third party. No question of combination—the fact there are more defendants than one does not show combination—or of conspiracy to injure arises. If an act has been done by the defendants, which deprives the plaintiff of the enjoyment of a contractual right—assuming the right to be contractual—I think, subject to the question of damage to the plaintiff, which I will deal with later, the plaintiff has a right of action against the defendants.

In his judgment in *Quinn* v. *Leathem*(3), Lord Macnaghten, in discussing *Lumley* v. *Gye*(4) said (p. 510). "Speaking for myself, I have no hesitation in saying that I think the decision was right, not on the ground of malicious intention—that was not, I think, the gist of the action—but on the ground that a violation of legal right committed knowingly is a cause of action, and that it is a violation of legal right to interfere with contractual relations recognised by law if there be no sufficient justification for the interference." I take it, Lord Macnaghten assumed that the

(1) I. L. R., 24 Mad., 36.
(2) [1893] 1 Q. B. 715.
(3) [1901] A. C., 495.
(4) 2 E. & B., 216.

violation of the legal right caused damage to the party whose right had been violated.

The question of course remains, assuming the plaintiff's rights as against Government to be contractual, what is the contract? The contract, if any, is a contract on the part of Government to continue such supply as is sufficient for the accustomed requirements of the ryotwari land-holder (see *Sankaravadivelu Pillai* v. *Secretary of State for India in Council*(1). It may well be that if Government had blocked up the channel in question the plaintiff would have no cause of action against them if they could show that they had made other provision to supply him with water sufficient to meet his accustomed requirements. But I do not think this defence is open to the defendants. Even if it were they have not attempted to set it up. They have not sought to justify their act on any ground of law in the view that the channel which they blocked up was the channel which had been irrigating the plaintiff's lands. The case was fought in the lower Courts solely on the question whether the plaintiff's lands had in fact been irrigated by the channel which the defendants blocked up.

I think the defendants' act was in violation of the plaintiff's right, and applying the law as enunciated by Lord Macnaghten in the passage I have cited, I think the plaintiff has a right of action against the defendants, if, as the result of their act, he has sustained damage. It is true there is no express finding as to damage and though there is a general allegation of injury, no damages are claimed in the suit. But I think the plaintiff is entitled to the injunction without any express finding as to damage. It might have been otherwise if the result of the defendants' act had merely been to diminish the supply of water which the plaintiff had been accustomed to receive. But here the channel has been blocked at its source, and as the result of the defendants' act the plaintiff has been deprived of the supply of all the water which he has been accustomed to receive by means of this channel. Even if, in such a case, damage is not to be presumed, seeing that the defendants have violated what is, against them, at any rate a *primâ facie* right in the plaintiff, I think it was for them to show that no damage was sustained by the plaintiff, and they have not attempted to do this.

(1) I. L. R., 28 Mad., 72 at p. 74.

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In the view that the plaintiff had a proprietary right in the water of the channel in question as appurtenant to the ownership of the land it could not be contended that the act of the defendants did not amount to an infringement of that right. In this view also, I think, the plaintiff, for the reasons I have stated is entitled to an injunction without an express finding as to damage.

I think the injunction was rightly granted and I would dismiss this second appeal with costs.

MILLER, J.—The material facts of the case as presented to us and as found by the District Judge are the following:—The defendants, Mirasidars of Perambur Village, irrigate the lands of that village which are classed as 'wet,' from the Perambur channel, an irrigation channel constructed before the paimash by the Government of the day for the purpose of conducting water to the village of Perambur. The plaintiff is a ryot of Edakudi, holding land near the Perambur channel at a Point above the Perambur village. The District Judge finds as a fact, and we accept the finding, that this land is watered from a small channel, the Kandiamadai Kanni which was in existence at the paimash, and is led from the southern bank of the Perambur channel. We must on these facts take it that the plaintiff's irrigation of his land for at least 60 years from the Perambur channel without interference by the Government is proved. The defendants blocked up the entrance of the Kandiamadai Kanni by an obstruction placed in the bank of the Perambur channel and so deprived the plaintiff of the use of the water of that channel The District Judge has restrained them by injunction from repeating the obstruction.

It does not seem that any question was argued in the lower Court as to the right of the plaintiff to obtain a decree if the facts are found as they have been found. The controversy was as to the existence or non-existence of the Kandiamadai channel as a paimash channel, and it seems to have been assumed, in spite of the second issue, that the plaintiff would be entitled to a decree if the existence of the channel were established.

Here it is contended for the appellants that even on the facts found the plaintiff is not entitled to a decree; the argument is that the supply of water for irrigation is made by the Government to the ryot on the footing of contract, and if the defendants

obstruct the plaintiff's supply they can be made liable, if at all, only on proof of actual damage (of which it is contended, there is here no proof) as for procuring a breach of contract. For the plaintiff, on the other hand, it is argued that his right to the water of the channel is a right of property appurtenant to his occupation of his land, and that any interference with it by the defendants renders them liable to be restrained by injunction. Mr. Seshagiri Ayyar did not suggest that we ought not to apply to India the principles of law (apart from any question of conspiracy) enunciated by the House of Lords in *Quinn* v. *Leathem*(1) and by the decisions in other cases in England; and if we do so, and I know no reason why we should not do so, there is no doubt that in the present case the plaintiff has a cause of action if he has been injured by the act of the defendants. If their act has injured him, the defendants have injured him without just cause or excuse; for they have not suggested any justification; they contented themselves with denying the existence of the channel and consequently any obstruction by themselves; and the act by which the injury has been inflicted is without doubt a wrongful act, the blocking up of a channel which the defendants had no right to block up and which the plaintiff had by his contract with the Government—that is the assumption— a right to have kept open. This was practically conceded by Mr. Seshagiri Ayyar; and the question is therefore simply whether the plaintiff has shown that he has suffered any injury. The Advocate-General pointed to evidence which, if believed, might prove damage, but what is found by the lower Appellate Court is that the whole Kandiamadai Kanni was blocked up, and that, if while the channel was so blocked the plaintiff was able to obtain water from the Edakudi channel that was by leave and license of the Edakudi Mirasidars, who might at any time revoke the license and leave the plaintiff without water. This finding is arrived at in the course of a discussion of the District Munsif's finding that the plaintiff customarily watered his crops from Edakudi channel, and not on a consideration of any question of damage, for no issue was framed upon that question, nor does it seem to have been presented to the Court in argument. Damage generally was alleged in the plaint (paragraph 9) though not estimated in money, and was

(1) [1901] A. C., 495.

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denied in the defendants' written statement, but no decision has been given on the question.

If damage is proved the injunction granted by the District Judge may be sustained as the appropriate remedy to prevent the repetition of the injury. It was the remedy adopted in *Ramchandra* v. *Narayanaswami* (1). I have had some doubt whether we can decide this question of damage or no damage without obtaining a further finding from the District Judge, but having had an opportunity of reading the judgment just delivered by the learned Chief Justice, I am able to agree with him that it will not be necessary to send back the case. The whole of the plaintiff's water-supply being cut off by the defendants, it seems to follow, as a matter of necessary inference, that the plaintiff must have been damaged: if he had to be at the trouble of providing himself with a new source of supply, that is damage, or at any rate ought to be so considered unless the defendants can show that it was not. Such damage may not be easily estimated in money, but it is actual damage none the less. I may refer to the case of *Exchange Telegraph Company* v. *Gregory & Co.* (2), in which three injunction were granted, of which one restrained the defendant from "continuing to induce any subscriber of the plaintiffs to supply the defendant with the said information (the information was information supplied by the Stock Exchange Committee to the plaintiffs and by them to their subscribers) in breach of his contract with the plaintiffs." In considering the propriety of this injunction Lord Esher, M. R., made the following observation:— "It is said that plaintiffs have not been injured; but what the defendant has done must have injured them . . . . Though I think there must be some damage to support an action for the infringement of the plaintiff's common law right, it is enough to show that the act complained of was done in such a way as to be likely to damage the plaintiffs, though proof of specific damage be not given;" and Kay, L. J., says "I agree that the gist of the action would be damage; but if a Judge or jury could properly infer from the acts complained of that those acts must result in damage to the plaintiffs, that is enough."

In the present case on the finding that the effect of the defendants' act was to drive the plaintiff to seek a precarious

(1) I. L. R., 16 Mad., 333. (2) [1896] 1 Q. B., 147.

water-supply, dependent on the good will of the Edakudi Mirasidars, we ought to hold that that act must have damaged the plaintiff.

I concur therefore in dismissing the second appeal with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Miller.

KRISHNA SATAPASTI (FIRST DEFENDANT), APPELLANT,

v.

SARASVATULA SAMBASIVA ROW (PLAINTIFF), RESPONDENT.*

1908 January 23, 24.

Civil Procedure Code, Act XIV of 1882, s. 244—Auction purchaser not a representative of decree-holder when the question is the right of such purchaser to possession against judgment debtor.

The purchaser at an auction sale, held in execution of a decree, is not the representative of the decree-holder, when the question to be decided is the right of such auction purchaser to possession as against the judgment-debtor.

Section 244 of the Code of Civil Procedure is no bar to a separate suit by the auction purchaser for possession of the purchased property from the judgment-debtor

Kishori Mohun Roy Chowdry v. *Chunder Nath Pal* (I.L.R., 14 Calc., 644), followed.

Manickka Odayan v. *Rajagopala Pillai*, I.L.R., 30 Mad., 507, doubted.

Sandhu Taraganar v. *Hussain Sahib* (I.L.R., 28 Mad., 87), considered.

Obiter:—The purchaser from a decree-holder is, but the purchaser at a Court sale is not, a representative of the decree-holder for the purposes of section 244.

SUIT for redemption.

The suit-land, which belonged to the first defendant, was purchased by the plaintiff's late father, Sarasvatula Venkata Kondayya Pantulu, for Rs. 21, subject to the second defendant's mortgage, at the Court-sale held in execution of the decree against the first defendant in Original Suit No. 569 of 1885 on the file of this Court. The plaintiff now sued for its redemption.

The first defendant contends that, subsequent to the Court-sale, the plaintiff's father orally conveyed the land to him for

* Second Appeal No. 478 of 1905, presented against the decree of W. B. Ayling, Esq., District Judge of Ganjam at Berhampur, in Appeal Suit No. 287 of 1904, presented against the decree of M. R. Ry. P. Lakshminarasu Pantulu, District Munsif of Berhampur, in Original Suit No. 353 of 1903.