APPELLATE CIVIL.

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

PAMANUJA CHARIAR (FOURTH DEFENDANT), APPELLANT,

v.

KRISHNASAWMI MUDALI AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

1907. December 17, 18.

Water, damage caused by retention of—Liability of owner of land for damage caused by storage of water.

An owner of land is not liable for damage caused to other lands by the retention of water on his land in the natural and usual course of enjoying his property.

The retention of water by a person on a portion of his land to prevent its passing on to other portions of his land is not an act done in the natural and usual course of enjoyment and the person so doing is liable for damage caused thereby, *Moholal* v. *Baijivkore* (I L.R. 28 Bom., 472), doubted and distinguished.

THE facts are sufficiently stated in the judgment of the lower Appellate Court which was as follows:—

"The facts are defendant owns fields B. C. C1 in the plan. South of field B lies field G which belongs to plaintiffs. B and G are separated by a bund, E, three feet high. Fields C and C1 are nominally irrigated from the Channel D. Field B is irrigated from the channel that runs through culvert A. Formerly this channel continued towards that east, but that part is silted up and the water now flows westward on to field C. Defendant does not wish it to flow west, so he increased the size of the ridge dividing B from C, from one foot high to 4½ feet high. The effect of this is to cause water to stagnate in the south part of field B and this percolates into the north part of field G and water logs it and renders it unfit for cultivation. Besides the actual waterlogging of four cents in field B, plaintiff states that he fears that in time of flood much water will collect in B and this may cause the bund E to breach. The apprehension is not unreasonable. The District Munsif found that defendant had done no wrong by building a bund on his own

* Second Appeal No. 302 of 1905 presented against the decree of R. D. Broadfoot, Esq., District Judge of Chingleput in A.S. No. 151 of 1904, presented against the decree of M.R.Ry. C, Krishna Swami Row, District Munsif of Conjeeveram, in O S. No, 290 of 1901.

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land and dismissed the suit holding the matter to be a case of *damnum absque injuria*."

" appeal."

I think the District Munsif is wrong and that the maxim applicable is *sic utere tuo ut alienum non laedas*. Plaintiff is not protecting himself against an extraordinary flood ; he is for his own convenience interrupting the flow of surplus water and storing it on part of his land. In so doing he is bound to see that it does not damage his neighbour.

I decide in favour of plaintiff and allow him damages of one rupee. So much of the buud F shall be removed as is necessary to prevent damage to plaintiffs' land ; 12 Calcutta, 323, and defendants will be restrained from increasing the size which shall be settled in execution."

V. V Srinivasa Aiyangar for appellant.

The Hon. Mr. *V. Krishnaswami Aiyar* for respondent.

The fourth defendant appealed to the High Court

JUDGMENT.—It is true that the water was not brought on to the 4th defendant's land by any act of his, but we read the finding as a finding that the fourth defendant retained water which flowed on to one portion of his land for the purpose of protecting another portion of his land, and the result of the water being so retained was that damage was caused to land of the plaintiffs which adjoined the portion of the fourth defendant's land where the water had been retained. We think the principle of the decision in *Whally* v. *Lancashire and Yorkshire Ry. Co* (1) and *Baird* v. *Williamson*(2) applies to this case. It seems to us that the soundness of the decision in the case of *Moholal* v. *Bai Jivkore*(3) may be open to doubt. But the case may be distinguished on the ground that in that case, although it may perhaps be said the defendant did not bring the water on to his land, the act done by him, viz., the digging of a trench for the purpose of building operations was an act done in the natural and usual course of enjoyment of the defendant's property. The retaining of water on one part of a man's land in order that it might not flow on to another part does not appear to us to be an act done in the natural and usual course of the enjoyment of property which would protect the man

(1) 13 Q.B.D., 131. (2) 15 C. B. (NS), 376.
(3) I.L.R., 28 Bom., 472.

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.]