

is that the workman cannot hold a small object with the right hand. On the entire evidence the Commissioner for Workmen's Compensation has come to the conclusion that the earning capacity of the workman in every employment which he was capable of undertaking at the time of the accident has been reduced to nothing and that the workman has lost completely and permanently the use of the thumb and the other fingers of the right hand. It is not possible for me to go behind this clear finding of fact, and, accepting the same, I dismiss this appeal with costs because the finding concludes the matter.

1936

UPPER
DOAB
SUGAR
MILLS
LTD.
2.
DAULAT
RAM

*Before Sir Shah Muhammad Sulaiman, Chief Justice, and
Mr. Justice Bennet*

MURLI AND OTHERS (DEFENDANTS) *v.* HANUMAN PRASAD
AND ANOTHER (PLAINTIFFS)*

1936
March, 12

Riparian owners—Natural rights of user in respect of natural streams—Reasonable and equitable user—Damming up the river for the purpose of a mill—Whether material injury caused thereby to a riparian owner higher up the stream in using it for his own mill—Question of degree—Suit for damages—Prescriptive rights and Natural rights, scope of—Easements Act (V of 1882), sections 7, illustration (h), 23 and 29, illustration (a).

All that the law relating to the natural rights of riparian owners to use the water of a natural stream requires of a party, by or over whose land the stream passes, is that he should use the water in a reasonable manner, and so as not to destroy or render useless or materially diminish or affect the application of the water by the proprietors above or below him on the stream. He has a right to the use of it for any purpose, provided that he does not thereby interfere with the rights of other proprietors, either above or below him. Subject to this condition he may dam up the stream for the purpose of a mill, but not if he thereby interferes with the lawful use of the water by other proprietors and inflicts upon them a sensible injury. This principle has been adopted in section 7, illustration (h), of the Easements Act.

*Appeal No. 71 of 1935, under section 10 of the Letters Patent.

1936

MURLI
v.
HANUMAN
PRASAD

The plaintiff and the defendant were riparian owners each of whom was utilising the water of a flowing river, by means of dams and sluices, for driving the wheels of his flour mill. The defendant's mill was about two miles further down the stream than the plaintiff's mill. Later, the defendant raised the height of his dam and sluices, with the result that the water accumulated at the plaintiff's causeway and the level of the water near the blades of the plaintiff's mill was raised by 11 inches, causing a loss of about 23 per cent. of the available power. The plaintiff sued for damages; the right claimed by him was not a prescriptive right, as his mill had been in existence for less than 20 years, but the natural right of riparian owners: *Helá*, that the act of the defendant was not such an interference with the natural rights of the plaintiff as would give rise to a claim for damages, as it did not prevent the plaintiff from exercising his natural right of making use of the water for the purpose of a mill; all that it had done was to cause a slight diminution in the efficiency of the existing mill of the plaintiff, which could obviously be remedied by raising his mill and, if necessary, his dam by a corresponding height of 11 inches. Had the plaintiff already acquired a prescriptive right to use that particular mill in that particular manner in which he had been using it, only then could the suit for damages have been brought. In the absence of such a prescriptive right, the plaintiff had only the natural right to have a mill on the river and to use the water to work it; and the act of the defendant did not destroy or prevent the exercise of such natural right of the plaintiff. A right to the continuance of particular conditions of the water of a stream for the working of a particular mill could be acquired by prescription, and was not a natural right, as would appear from section 29, illustration (a) of the Easements Act.

Messrs. *Damodar Das and Panna Lal*, for the appellants.

Mr. S. S. *Shastry*, for the respondents.

SULAIMAN, C.J., and BENNET, J.:—This is a Letters Patent appeal by the defendants against the decree of a learned single Judge of this Court restoring the decree of the trial court in favour of the plaintiffs. The plaintiffs brought a suit for damages caused to the working of their flour mills on the river Pasoni in Banda district by the raising of the height of a bund two miles further

down the river for a similar mill by the defendants. The findings of fact of the lower appellate court are that the defendants had raised the dam and sluices. "It is proved by the evidence . . . that on account of accumulation of water near their blades plaintiffs' mills do not work properly" and that "on account of raising of defendants' dam, water accumulated at the causeway" and that by raising their dam the water below the plaintiffs' mill was raised 11 inches and plaintiffs would therefore lose about 23 per cent. of the available power and plaintiffs' mill would not work efficiently. The lower court pointed out that plaintiffs did not state whether they based their claim on easement or on natural rights. Paragraph 4 of the plaint stated that the mills of the plaintiffs had been working for 15 or 16 years. This period was less than the 20 years required for an easement and therefore the plaintiffs did not claim that they had a right of easement. The plaintiffs argued that they had a natural right. The court below found that plaintiffs had no natural right to dam up the river and to divert the flow of water for the working of their mills, that such rights could be acquired by prescription but could not be enforced as a natural right and that this was not in connection with riparian tenement. The learned single Judge has relied on a passage in *Wright v. Howard* (1), and a passage at page 99 is quoted which stated in regard to a river:

"But each proprietor of land on the banks has a right to use it; consequently all the proprietors have an equal right; and therefore no one of them can make such an use of it as will prevent any of the others from having an equal use of the stream when it reaches them. Every proprietor may divert the water for the purpose, for example, of turning a mill; but then he must carry the water back into the stream, so that the other proprietors may in their turn have the benefit of it. His use of the stream must not interfere with the equal common right of his neighbours; he must not injure either those whose lands lie below him on the banks of the river or

1936

 MURLI
 v.
 HANUMAN
 PRASAD

(1) (1823) 1 L.J. Ch., 94.

1936

MURLI
v.
HANUMAN
PRASAD

those whose lands lie above him. Injury may be done to the proprietors below him by diminishing the quantity of water which descends to them; it may be done to those above him by returning the water upon them so as to overflow their lands, or to disturb any of the operations in which they may have occasion to use the water, as for example by diminishing the extent of its fall."

We would refer to a later ruling, *Embrey v. Owen* (1), where it is laid down:

"All that the law requires of the party by or over whose land a stream passes is that he should use the water in a reasonable manner, and so as not to destroy, or render useless, or materially diminish or affect the application of the water by the proprietors above or below on the stream. He must not shut the gates of his dams and detain the water unreasonably, or let it off in unusual quantities, to the annoyance of his neighbour. Pothier lays down the rule very strictly, that the owner of the upper stream must not raise the water by dams, so as to make it fall with more abundance and rapidity than it would naturally do, and injure the proprietor below. But this rule must not be construed literally, for that would be to deny all valuable use of the water to the riparian proprietors. It must be subjected to the qualifications which have been mentioned, otherwise rivers and streams of water would become utterly useless, either for manufacturing or agricultural purposes."

In *Miner v. Gilmour* (2) it was laid down at page 156 as follows:

"By the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of the water flowing past his land; for instance, to the reasonable use of the water for his domestic purposes and for his cattle, and this without regard to the effect which such use may have, in case of a deficiency, upon proprietors lower down the stream. But, further, he has a right to the use of it for any purpose, or what may be deemed the extraordinary use of it, provided that he does not thereby interfere with the rights of other proprietors, either above or below him. Subject to this condition, he may dam up the stream for the purpose of a mill, or divert the water for the purpose of irrigation. But he has no right to interrupt the regular flow of the stream, if he

(1) (1851) 6 Exch., 353 (370 to 371). (2) (1858) 12 Moo. P. C., 131 (156).

thereby interferes with the lawful use of the water by other proprietors and inflicts upon them a sensible injury."

This passage has been referred to with approval by Lord HALSBURY in *John White and Sons v. J. & M. White* (1) as follows:

"Lord KINGSDOWN, in *Miner v. Gilmour* (2) stated the rule in terms that have generally been adopted ever since. By the general law applicable to running streams, every riparian proprietor has a right to what may be called the ordinary use of the water flowing past his land. Further, he may, subject to the condition that he does not thereby interfere with the rights of other proprietors either above or below him, dam up the stream for the purpose of a mill."

This judgment may be referred to in regard to a question which arose as to whether the dam erected by the plaintiff turned the channel into an artificial stream. The map shows that there is a large rock in the stream and the plaintiff has made a dam using the rock as part of the dam and his mill is apparently worked by the water from one side of his dam so that the mill is actually adjoining the river. On page 80 Lord HALSBURY stated:

"In some curious manner—a manner which it is very difficult to understand—it seems to have been assumed in some of the arguments here that the artificial addition to the natural rock, which, to some extent, forms the dam, has made some difference to the rights of the parties. The right to maintain that artificial addition to the rock may be assumed; but it does not follow that the addition to the rock has in any respect altered the legal relations of the parties."

It is also stated in *Gale on Easements*, 11th edition, page 262: "It seems that the use of artificial aids (as mill leats, etc.,) by a riparian owner does not in any way affect his natural right to the use of the water." On the other hand prescriptive rights are referred to in *Gale* at page 274: "In the case of water flowing through a natural watercourse with a defined channel, rights may be acquired by prescription which interfere with what

1936

 MURTI
 &
 HANUMAN
 PRASAD

(1) [1906] A.C., 72 (79, 80)

(2) (1858) 12 Moo. P. C., 131 (156)

1936

MURLI
v.
HANUMAN
PRASAD

would otherwise be the natural rights of other proprietors above and below. A riparian owner may by user acquire a right to use the water in a manner not justified by his natural rights; but such acquired right has no operation against the natural rights of a landowner higher up or lower down the stream, unless the user affects the use such landowner has of the stream, or his power to use it, so as to raise the presumption of a grant, and so render the tenement above or below a servient tenement." It appears therefore that the law to apply in the present case is the law applicable to natural streams and not the law applicable to artificial channels. The rights of riparian owners are the subject of paragraphs 620 to 622 in Halsbury's Laws of England, volume 11, page 352 of second edition, and a similar rule is laid down.

Now the evidence in this case establishes that the dam raised by the defendants has caused a rise of 11 inches in the level of the stream below the dam of the plaintiffs. The raising of the level by this small amount does not appear to us to be such an interference with the natural rights of the plaintiffs as would give cause to a right to sue for damages. The natural rights of the plaintiffs as a riparian owner or tenant are to have the use of the water in the stream and they may use such water for the purpose of running a mill. The action of the defendants has not prevented the plaintiffs from making use of the water for the purpose of a mill. All that the action of the defendants has done is to cause a slight diminution in the efficiency of the existing mill of the plaintiffs. The plaintiffs can obviously remedy this matter by raising their mill and, if necessary, their dam by a corresponding height of 11 inches. It would only be, in our opinion, if the plaintiffs had acquired by prescription an easement to use that particular mill in that particular manner that it could be said that a case would lie for damages. The plaintiffs have not acquired any easement in regard to that particular mill. They

1936

MURLI
v.
HANUMAN
PRASAD

have only got the right to have a mill on the river. The action of the defendants does not prevent the plaintiffs using their natural right. The distinction appears to us to be an important one between the exercise of a natural right and the exercise of that right in a particular manner with a particular machine. Considering the principles laid down in *Embrey v. Owen* (1) we think that the defendants have not acted in an unreasonable manner and have not destroyed or rendered useless the application of the water by the plaintiffs. We think the defendants are not shown to have acted in a manner which would give rise to a claim for damages.

Learned counsel for the respondents referred to *Subramaniya Ayyar v. Ramachandra Rau* (2) and *Perumal v. Ramasami Chetti* (3), but in our opinion those rulings have no bearing on the point. The principles which we have enunciated from the English rulings have been adopted in the Indian Easements Act. Section 7(b) sets out the following natural right: "The right of every owner of immovable property (subject to any law for the time being in force) to enjoy, without disturbance by another, the natural advantages arising from its situation. . . Illustration (h). The right of every owner of land that the water of every natural stream which passes by, through, or over his land in a defined natural channel shall be allowed by other persons to flow within such owner's limits without interruption and without material alteration in quantity, direction, force or temperature." But rights to particular conditions of water for a particular mill are acquired by prescription and are not natural rights; see section 29, illustration (a): "A, the owner of a mill, has acquired a prescriptive right to divert to his mill part of the water of a stream. A alters the machinery of his mill. He cannot thereby increase his right to divert water." And similarly in section 23, illustration (a): "A, the

(1) (1851) 6, Exch., 353.

(2) (1877) I.L.R., 1 Mad., 335.

(3) (1887) I.L.R., 11 Mad., 16.

1936

MURLI
v.
HANUMAN
PRASAD

owner of a saw-mill, has a right to a flow of water sufficient to work the mill. He may convert the saw-mill into a corn-mill, provided that it can be worked by the same amount of water."

Accordingly we allow this Letters Patent appeal and we set aside the decree of the learned single Judge and we restore the decree of the lower appellate court with costs throughout.

REVISIONAL CIVIL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Harries

BRITISH INDIA CORPORATION, LTD. (OPPOSITE PARTY)
v. ROBERT MENZIES (APPLICANT)*

1936

March, 16

Companies Act (VII of 1913), section 36—Register of members—Right to obtain a copy—Enforcement of the right by order of company court on a petition—Jurisdiction—Companies Act, section 3—Inherent jurisdiction to order compliance with mandatory provisions of the Act—Mandatory injunction without a regular suit—General Rules (Civil), chapter XIX-A, rule 2.

Section 3 of the Companies Act provides that the courts specified in that section have jurisdiction under the Companies Act. Accordingly, although in some cases there is no specific provision in the Act as regards the authority of the court to enforce compliance with the provisions creating statutory obligations on companies, nevertheless the courts referred to in section 3 have inherent jurisdiction to pass orders to compel due observance of the statutory obligations of a company and for giving redress to a person aggrieved by an illegal omission or refusal on the part of a company. Where there is a wrong there must be a remedy.

A company court, therefore, has jurisdiction to direct by mandatory order a company to comply with its statutory obligation under section 36(2) of the Companies Act to supply a copy of the register of members to a shareholder on requisition by him. Such jurisdiction cannot be deemed to be expressly or impliedly barred by reason of the circumstance that clause (3) of section 36 provides a penalty by way of fine for non-com-

*Civil Revision No. 92 of 1936.